

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

10-26-64

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
for the District of Columbia Circuit

No. 18,419

FILED MAR 18 1964

Nathan J. Paulson
CLERK

JAMES F. BIRD, Individually,
and
JAMES F. BIRD and JEROME KEITH,
Executors of the Estate of
Laura L. Jeffords, Deceased,

958
Appellants,

v.

ESTELLE S. McCORD
and
HARLOW C. McCORD,

Appellees.

Appeal From The United States District Court
For The District of Columbia

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,419

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and
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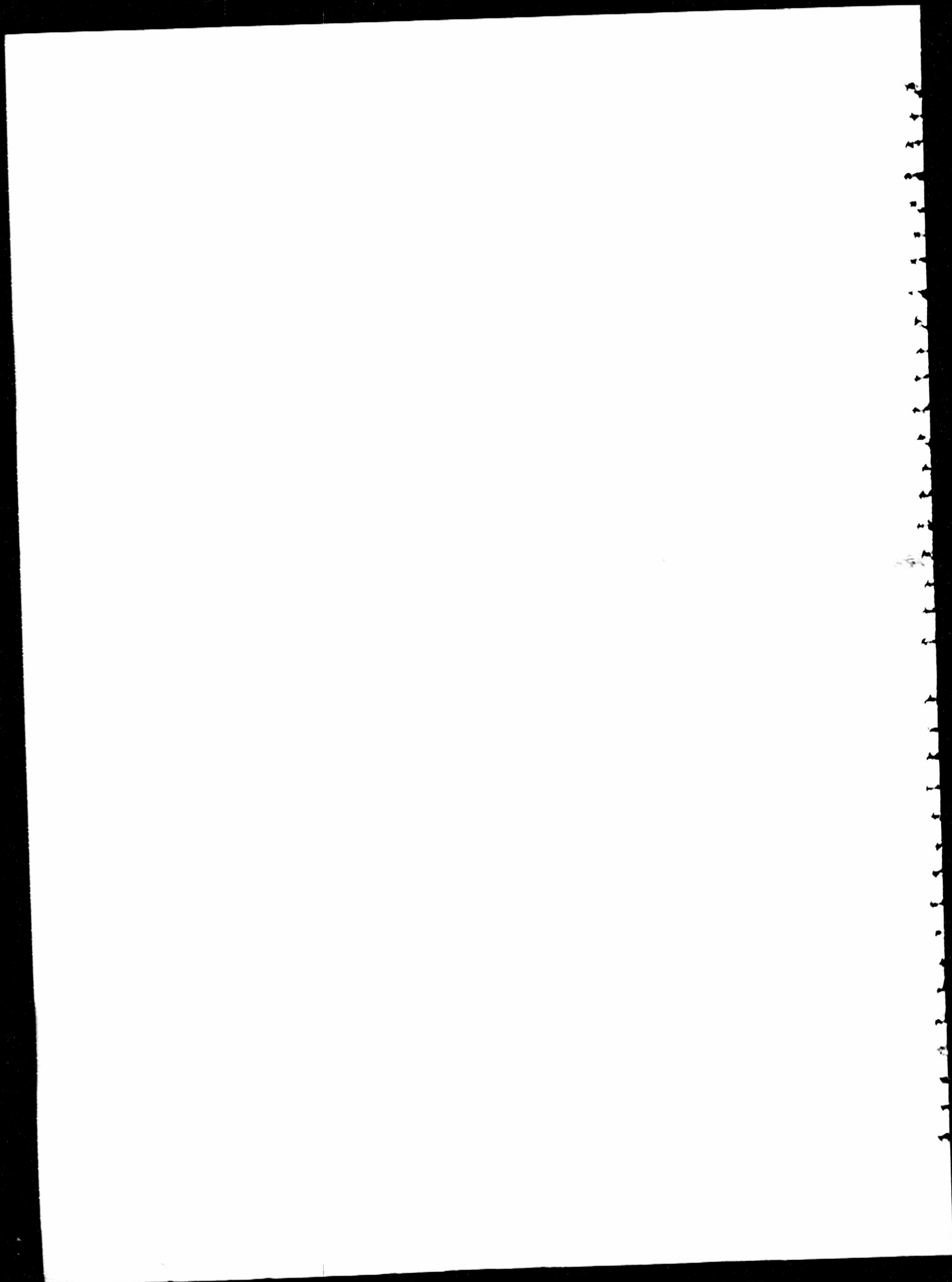
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JOINT APPENDIX

[Filed June 9, 1960]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ESTELLE S. MC CORD
2928 Garfield Terrace, N. W.
Washington, D. C.,

Plaintiff,

v.

JAMES F. BIRD, individually and
as Executor of the Estate of Laura
L. Jeffords, deceased,
3636 16th Street, N. W.,
Washington, D. C.

and

JEROME KEITH, As Executor of
The Estate of Laura L. Jeffords,
Deceased, Chapel Lane
Riverside, Connecticut
(SERVE: Register of Wills, D.C.),

Defendants.

Civil Action No. 1746-60

COMPLAINT FOR RECOVERY OF SECURITIES
OR THEIR VALUE, FOR ACCOUNTING,
INJUNCTION, ETC.

1. This Court has jurisdiction of this cause, the amount involved exceeding the sum of Three Thousand Dollars (\$3,000.00).
2. The plaintiff, ESTELLE S. MC CORD, is a citizen of the United States and a resident of the District of Columbia, and brings this action in her own right as the owner of certain securities.
3. The defendant, JAMES F. BIRD, is sued individually and as Executor of the Estate of Laura L. Jeffords, and the defendant, JEROME KEITH, is sued as an Executor of the Estate of Laura L. Jeffords, said

Executors having been appointed by the Probate Branch of this Court in Administration No. 99,749.

4. On or prior to December 17, 1959, Laura L. Jeffords made a gift of, and delivered to the plaintiff, a certain cedar chest and its contents. Prior to the death of Laura L. Jeffords on December 25, 1959, the plaintiff accepted said gift and removed the chest and its contents to her home. That among the contents of said chest were certain stocks and bonds, valued in excess of Three Thousand Dollars (\$3,000.00), and which said decedent intended to and did include in the aforementioned gift to the plaintiff.

5. Thereafter, on or about December 21, 1959, the defendant, JAMES F. BIRD, individually, came to the plaintiff's home at plaintiff's request to inventory the contents of the chest. Said BIRD then knew that Laura L. Jeffords had made a gift to plaintiff of said chest and its contents. Said defendant advised the plaintiff that it was necessary that he take possession of said stocks and bonds and that the court would have to determine whether plaintiff was entitled to them. Whereupon, plaintiff allowed said defendant BIRD to take possession of said stocks and bonds.

6. On or about December 25, 1959, the said Laura L. Jeffords died, leaving a last will and testament in which the defendants, JAMES F. BIRD and JEROME KEITH were named Executors. The said will has been admitted to probate and record in the Probate Branch of this Court, Administration No. 99,749, and the defendants, JAMES F. BIRD and JEROME KEITH have qualified as Executors.

7. The plaintiff is advised and believes and, therefore, avers that the defendant JAMES F. BIRD, individually, has turned over and delivered to the defendants, JAMES F. BIRD and JEROME KEITH, as Executors of the Estate of Laura L. Jeffords, some or all of the said securities, which were the subject of the gift to the plaintiff. Plaintiff has demanded that said defendants return the said securities to her but they have failed and refused to do so.

8. Plaintiff is advised that said Executors have obtained an Order of Court authorizing them to sell the securities of the decedent which have come into their hands; that included among said securities are those which the decedent gave to the plaintiff, but which the Executors have failed and refused to deliver to the plaintiff; that if said securities are sold, plaintiff's rights will be prejudiced and she will suffer irreparable harm and injury.

9. Plaintiff further avers that the securities, which are the subject of this action, are interest-bearing bonds and dividend-paying stocks, and that dividends and interest have accrued and have been payable thereon since said securities were taken from her by the defendant, JAMES F. BIRD. Plaintiff believes and avers that the defendants have received such dividends and interest.

WHEREFORE, THE PREMISES CONSIDERED, the plaintiff demands judgment as follows:

1. That the defendant JAMES F. BIRD, individually, and the defendants, JAMES F. BIRD and JEROME KEITH, As Executors of the Estate of Laura L. Jeffords, be enjoined temporarily and pendente lite from disposing of, by sale or otherwise, any of the securities which the decedent gave to this plaintiff.

2. That the defendant, JAMES F. BIRD, individually and the defendants, JAMES F. BIRD and JEROME KEITH, AS Executors be ordered to transfer and deliver to plaintiff all of the securities which the decedent gave to plaintiff, and that they be further required to execute such documents of transfer as may be necessary in the circumstances.

3. That in the event the defendant James F. Bird, individually or the defendants, JAMES F. BIRD and JEROME KEITH, As Executors, have sole or otherwise disposed of any of the securities, that plaintiff have a money judgment against such of the defendants who may have done so for the full value of the said securities.

4. That the defendant JAMES F. BIRD, individually and the defendants JAMES F. BIRD and JEROME KEITH, AS Executors, be

compelled to account to the plaintiff for the income received from the said securities.

5. And for such other and further relief as the nature of the case may require, and to the Court may seem just and proper.

/s/ Estelle S. McCord
Plaintiff

JACKSON, GRAY & JACKSON

By: /s/ Robert M. Gray
Attorneys for Plaintiff

* * *

DISTRICT OF COLUMBIA SS:

ESTELLE S. McCORD, being first duly sworn on oath, deposes and says that she has read the foregoing and annexed complaint by her subscribed and knows the contents thereof; that the facts therein stated are true to the best of her information, knowledge and belief.

/s/ Estelle S. McCord,

SUBSCRIBED AND SWORN TO BEFORE ME THIS 9th DAY OF
JUNE, 1960.

/s/ Zoe M. Shea
Notary Public, D.C.,
My Commission expires Feb. 14, 1965.

[Filed July 13, 1960]

**ANSWER OF JAMES F. BIRD AND
JEROME KEITH AS EXECUTORS OF
THE ESTATE OF LAURA L. JEFFORDS**

Comes now James F. Bird and Jerome Keith as Executors of the Estate of Laura L. Jeffords, by their attorneys, A. Slater Clarke and Charles B. Sullivan, Jr., and as answer to the complaint filed herein states:

First Defense

The complaint fails to state a cause of action against these defendants upon which relief can be granted.

Second Defense

These defendants deny all material allegations contained in the complaint and as further answer states that the deceased, Laura L. Jeffords, did not make any gift of any of her property to the said Estelle S. McCord and these defendants further allege that the plaintiff is estopped and has waived her claim of any gift since she surrendered the items of the alleged gift to the Executors of the Estate.

Third Defense

These defendants have no information whatsoever showing that the late Laura L. Jeffords, ever intended to make a gift of the items in question to the plaintiff and these defendants further state that at the time alleged by the plaintiff, the deceased was incapable of making a valid gift to the plaintiff due to her physical and mental condition.

Fourth Defense

These defendants allege that the plaintiff's possession of the items of her claimed gift resulted from the defendants directing the plaintiff to take charge of the assets for safekeeping purposes only just prior to the demise of Laura L. Jeffords. It has come to the attention of these defendants in their capacity as executors of the Estate of Laura L. Jeffords that the plaintiff has in her possession the following items belonging to the Estate:

- A. Two (2) United States Government Coupon Bonds, face value of \$5,000.00 each, a total value of \$10,000.00.
- B. Cash money of \$1,238.00.
- C. Cedar chest and contents containing silver flatware, service piece, papers, linens, etc.
- D. Two (2) rings, One Three (3) diamond and One Garnet.
- E. One Sunburst Diamond Pin.

WHEREFORE, the premises considered, the defendants pray:

1. That the complaint be dismissed and costs assessed against the plaintiff herein.
2. That the Court require the plaintiff to return the aforesaid items presently in the possession of the plaintiff to the Executors.
3. And for such other and further relief as to the Court may seem just and proper.

/s/ A. Slater Clarke
Charles B. Sullivan, Jr.
Attorneys for Defendants

* * *

[Certificate of Service]

COUNTERCLAIM

Comes now the defendants, James F. Bird and Jerome Keith, as Executors of the Estate of Laura L. Jeffords, Deceased, and represent as follows:

1. That the counterclaimants are the duly-appointed Executors of the Estate of Laura L. Jeffords, by order of the Probate Branch of this Court in Administration No. 99749.

2. That your counterclaimants have information and belief that the plaintiff, Estelle S. McCord, is concealing various assets of the Estate including the following items:

- A. Two (2) United States Government Coupon Bonds, face value of \$5,000.00 each, a total value of \$10,000.00.
- B. Cash money of \$1,238.00.
- C. Cedar chest and contents containing silver flatware, service piece, papers, linens, etc.
- D. Two (2) rings, One Three (d) diamond and One Garnet
- E. One sunburst diamond pin.

3. That the counterclaimants claim that the aforesaid items are part of the Estate of Laura L. Jeffords and request an order of this Court to require the plaintiff to turn over each and every item to these Executors of the Estate.

WHEREFORE, the counterclaimants as Executors of the Estate of Laura L. Jeffords, pray:

1. That Estelle S. McCord be temporarily and permanently enjoined from disposing of, by sale or otherwise, the property set forth herein until final disposition of this suit by the Court.

2. That Judgment be entered requiring the plaintiff, Estelle S. McCord to transfer and deliver all the assets and property of this Estate to the Executors herein.

3. That in the event that the said Estelle S. McCord has sold or otherwise disposed of any of the assets that a money judgment be entered against her for the full and true value of the said assets.

4. And for such other and further relief as to the nature of the case may require and to the Court may seem just and proper.

/s/ Charles B. Sullivan, Jr. and
A. Slater Clarke
Attorney for Defendants

[Certificate of Service]

[Filed Aug. 3, 1960]

REPLY TO COUNTERCLAIM

For reply to the counterclaim filed herein by the defendants, James F. Bird and Jerome Keith, as Executors of the Estate of Laura L. Jeffords, deceased, the plaintiff says:

FIRST DEFENSE

The counterclaim fails to state a cause of action upon which relief can be granted.

SECOND DEFENSE

1. The averments of paragraph one of the counterclaim are admitted.
2. The averments of paragraph two of the counterclaim are admitted.
3. The averments of paragraph three of the counterclaim are denied.

THIRD DEFENSE

1. The plaintiff says she has in her possession and has had in her possession for some time prior to the death of Laura L. Jeffords two United States Government bonds, principal amount of \$5,000.00 each, that she acquired them from Laura L. Jeffords pursuant to an agreement for a valuable consideration and is the owner thereof.

FOURTH DEFENSE

1. The plaintiff says that the cedar chest and contents referred to in paragraph 2 C of the counterclaim, the diamond pin referred to in paragraph 2 E of the counterclaim and cash amounting to Twelve Hundred Twenty Dollars referred to in paragraph 2 B of the counterclaim as \$1,238.00 are the plaintiff's property by virtue of gifts from Laura L. Jeffords.

JACKSON, GRAY & JACKSON

By: /s/ Robert M. Gray
Attorneys for Plaintiff

* * *

[Certificate of Service]

[Filed Oct. 13, 1960]

ANSWER OF DEFENDANT, JAMES F. BIRD, INDIVIDUALLY

Comes now the defendant, James F. Bird, individually by and through his attorney and as answer to the complaint filed herein by Estelle S. McCord, respectfully represents to this Honorable Court as follows:

First Defense

The complaint fails to state a cause of action upon which relief can be granted.

Second Defense

1. The defendant admits the allegations contained in paragraphs one (1), three (3), and six (6).

2. The defendant admits that the plaintiff is a citizen of the United States and a resident of the District of Columbia, but denies that she is the owner of certain securities.

3. In answer to paragraph four (4), the defendant specifically denies that the late, Laura L. Jeffords, ever made a gift to the plaintiff of a certain cedar chest and its contents or that the plaintiff ever accepted said gift, but states that the plaintiff came into possession of the said cedar chest as a result of this defendant permitting her to remove the said cedar chest from the home of the late Laura L. Jeffords as a means of safekeeping the chest and its contents. This defendant, at that time, was acting under a power of attorney of the late Laura L. Jeffords. Said power of attorney having been previously filed in this cause of action. As further answer to paragraph four (4), the defendant denies that the decedent ever intended to or did include any stocks or bonds as a gift to the plaintiff.

4. That as answer to paragraph five (5), the defendant admits that he did visit the home of the plaintiff on or about December 21, 1959, but denies that he knew or that Laura L. Jeffords had made a gift to the plaintiff of the said chest and its contents and further denies all other allegations contained in this paragraph with the exception that the plaintiff did voluntarily surrender the said contents of the chest to the defendant.

5. That as answer to paragraph seven (7) of the complaint, the defendant states that any and all securities which came into the possession of this defendant have been fully accounted for to the probate division of this Court and are presently in the possession of James F. Bird and Jerome Keith as the executors of the Estate of Laura L. Jeffords with the exception of securities and other items of the Estate which the plaintiff has been holding adversely and which the Court has recently required her to deposit into the Registry of the Court. This defendant further denies that the plaintiff ever made a demand upon him individually or as the executor for the return of the securities.

6. The defendant denies the pertinent allegations contained in paragraph eight (8) of the complaint and as answer to paragraph nine (9) of the complaint, states that any interest or dividends received or any securities of the late Laura L. Jeffords have been accounted for in the said

Estate and that he has not retained any dividends or interest received in his individual capacity and resents the inference made by the plaintiff that he has failed to carry out the trust reposed in him as executor of this Estate.

WHEREFORE, the defendant, having fully answered the complaint filed herein, demands that the complaint be dismissed, and costs, including reasonable counsel fees, be assessed against the plaintiff.

/s/ ASC
A. SLATER CLARKE and
CHARLES B. SULLIVAN, JR.
Attorneys for Defendants
* * *

[Certificate of Service]

[Filed May 5, 1961]

ORDER

Upon consideration of the motion to quash subpoena and the opposition thereto and the oral arguments held in open Court, it is by the Court this 5th day of May, 1961,

ORDERED, ADJUDGED, AND DECREED, that the defendants be and they are hereby granted authority to bring in Harlow C. McCord as a party defendant to this litigation and to express their counterclaim against him, and it is further,

ORDERED, ADJUDGED, AND DECREED, that the subpoena be and same is hereby withdrawn without prejudice on the part of the defendants to reissue these discovery proceedings.

/s/ Luther W. Youngdahl
JUDGE

[Certificate of Service]

[Filed May 25, 1961]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ESTELLE S. MC CORD,

Plaintiff

v.

JAMES F. BIRD, Individually and as
Executor of the Estate of Laura L.
Jeffords, Deceased, and JEROME
KEITH, as Executor of the Estate of
Laura L. Jeffords, Deceased,

Defendants

and

JAMES F. BIRD AND JEROME KEITH,
Co-Executors of the Estate of Laura
L. Jeffords, Deceased,

Third Party Plaintiffs,

v.

HARLOW C. MC CORD,
C/O Alcoa, Ring Building, 18th and
M Streets, N.W., Washington, D. C.

Third Party Defendant.

Civil Action No. 1746-60

THIRD PARTY COMPLAINT

Comes now the defendants and third party plaintiffs, James F. Bird and Jerome Keith, as Executors of the Estate of Laura L. Jeffords, Deceased, and represent as follows:

1. That the third party plaintiffs are the duly appointed Executors of the Estate of Laura L. Jeffords, by order of the Probate Branch of this Court in Administration No. 99749.

2. That your third party plaintiffs, during the administration of the Estate of Laura L. Jeffords, and as a result of this action, have obtained information and verily believe that the third party defendant did individually or jointly with the plaintiff, Estelle S. McCord, did actively assist in removing various assets which the third party plaintiffs believe to be assets of this Estate.

3. That the third party plaintiffs did obtain an order of this Court requiring the plaintiff to deposit various assets, which the third party plaintiffs claim belong to this Estate, into the Registry of the Court; the assets included:

- A. Two (2) United States Government Coupons Bonds, face value of \$5,000.00, each, a total value of \$10,000.00.
- B. Cash money of \$1,238.00.
- C. One sunburst diamond pin.

4. That in addition to the aforesaid assets, the third party plaintiffs believe that other assets have been removed and are being concealed by the third party defendant, individually or in concert with the plaintiff, Estelle S. McCord. That the third party plaintiffs believe said assets have a fair and reasonable value of in excess of Three Thousand Dollars (\$3,000.00).

5. That since the third party defendant and the plaintiff, Estelle S. McCord, removed and concealed assets of this Estate, the third party plaintiffs seek the return of said assets or if said assets have been disposed of, a judgment for their reasonable and fair value, together with any and all damages which have accrued to this Estate as a result of this wrongful removal and concealment of assets.

WHEREFORE, the third party plaintiffs, as Executors of the Estate of Laura L. Jeffords, pray:

1. That Harlow C. McCord be temporarily and permanently enjoined from disposing of by sale or otherwise any and all property belonging to the Estate of Laura L. Jeffords or claimed to belong to the Estate of Laura L. Jeffords until final disposition of this cause by the Court.

2. That judgment be entered requiring the third-party defendant, Harlow C. McCord, to transfer and deliver all of the assets and property of the Estate to the Executors herein.

3. That in the event that Harlow C. McCord has sold or otherwise disposed of any of the assets, that a money judgment be entered against him for the full and true value of the said assets, together with damages including reasonable attorney's fees and Court costs.

4. And for such other and further relief as to the nature of the case may require and to the Court may seem just and proper.

/s/
CHARLES B. SULLIVAN, JR.,
AND A. SLATER CLARKE
Attorney for Defendants and
Third Party Plaintiffs

* * *

[Filed June 13, 1961]

ANSWER OF THIRD-PARTY DEFENDANT,
HARLOW C. McCORD, TO THIRD-PARTY
COMPLAINT

Comes now the third-party defendant, through counsel, and for answer to the Third-Party Complaint filed against him herein says:

FIRST DEFENSE:

The Third-Party Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE:

The Third-Party Defendant admits the averments of Paragraph 1 of the Third-Party Complaint; admits that an order was signed herein directing the plaintiff to deposit in the Registry of the Court a sum of money, two (2) Bonds, and a piece of jewelry, but refers to said Order, dated October 5, 1960, for a more accurate description of its contents; is without information or knowledge sufficient to form a belief as to the matters averred to be believed by the Third-Party Plaintiffs, and accordingly denies the same; and denies the remaining averments of the Third-Party Complaint.

JACKSON, GRAY & JACKSON

By: /s/ Robert M. Gray
Attorneys for Third-Party Defendant

* * *

[Certificate of Service]

[Filed June 6, 1963]

PRE-TRIAL PROCEEDINGS

Action for conversion, return of personal property, damages, and accounting for accrued income; counterclaim for conversion of personal property; third-party action for conversion, including injunction and/or damages.

UNDISPUTED FACTS:

Laura L. Jeffords died in the District of Columbia on December 25, 1959.

Ds James F. Bird and Jerome Keith are the duly appointed and qualified executors of the Estate of Laura L. Jeffords, deceased, Administration No. 99749, this Court.

PLAINTIFF Estelle S. McCord asserts that on or prior to December 17, 1959, Laura L. Jeffords, now deceased, gave, transferred and delivered to P a certain cedar chest together with the contents thereof, which gift was accepted by P prior to the death of decedent;

That among the contents of said chest were the following securities:

- (a) 12 shares Johns-Manville Corporation, common stock
- (b) 15 shares Lanston-Industries, Incorporated, capital stock
- (c) 2 shares Sperry-Rand Corporation, common stock
- (d) 20 shares Potomac Electric Power Company, common stock
- (e) 36 shares American Telephone and Telegraph Company, capital stock
- (f) \$1,000.00 United States Series H Bond
- (g) 2-\$100.00 4% Registered Series B Income Mortgage Bonds, Fort Dodge Des Moines & Southern Railway Co.

Plaintiff further asserts that on December 21, 1959, D James F. Bird, individually, came to P's home at P's request to inventory the contents of the chest; that said Bird then knew that Laura L. Jeffords had made a gift to P of said chest and its contents; that said D advised P that it was necessary that he take possession of said stocks and bonds

and that the Court would have to determine whether P was entitled to them; that P permitted said D to assume custody of the items listed above upon such representation, but P at no time relinquished her ownership or right to them;

That although P has demanded that D executors return said securities to her, they have failed and refused to do so.

Plaintiff further asserts that the securities are interest-bearing bonds and dividend-paying stocks and dividends and interest have accrued since said securities were taken from her by D Bird, which dividends and interest P believes the Ds have received.

Plaintiff asks judgment:

(1) For return to P of all of the securities listed above, now in possession of the Ds.

(2) That Ds be required to execute such documents of transfer as may be necessary under the circumstances.

(3) That in the event Ds have sold or otherwise disposed of any of said securities, P have a money judgment against D Bird, individually, and D executors as to the full value of said securities, plus accrued interest for dividends which would have been earned.

(4) That D Bird, individually, and D executors be compelled to account to P for the income received from said securities.

DEFENDANT BIRD, individually, and DEFENDANT EXECUTORS, BIRD AND KEITH, deny that Laura L. Jeffords made a gift of the securities claimed to P.

Defendants further alleged that P is estopped and has waived her claim of any gift since she surrendered the items of the alleged gift to the executors of the estate. Defendants further assert that at the time of the alleged gift, namely, on or about December 17, 1959, deceased, due to her physical and mental condition, was incapable of making a valid gift.

Defendants further assert that P came into the possession of the cedar chest and its contents as a result of D Bird, who had a power of

attorney from deceased, permitting P to remove the cedar chest from the home of decedent Jeffords for the purposes of safekeeping, and that prior to the death of decedent certain papers were returned to D Bird by P voluntarily and at her suggestion.

Defendants further assert that certain of the claimed securities, specifically item (g), the Fort Dodge-Des Moines and Southern Railway Co. bonds and certain other ones not now known to Ds, were not in the cedar chest at the time it was in the custody of P.

Defendants contend that the claimed securities were part of the estate of decedent Jeffords and therefore P is entitled to none of the relief prayed.

Defendant Bird, individually, in addition to the above, denies that he has or ever had in his possession individually any of the contents of the cedar chest here involved.

COUNTERCLAIM: (D Executors vs. McCord)

Defendant Executors in their counterclaim assert that P is concealing the following assets of the estate of Laura L. Jeffords, deceased:

- (a) Two (2) United States Government Coupon Bonds, face value of \$5,000.00 each, a total value of \$10,000.00
- (b) Cash money of \$1,238.00.
- (c) Cedar chest, and contents containing silver flatware, service piece, papers, linens, etc.
- (d) Two (2) rings, One Three (3) diamond and One Garnet.
- (e) One sunburst diamond pin.

NOTE: Items (a) and (c) and \$1220 of the cash referred to under (b) have been deposited by P in the registry of the Court.

Defendant Executors assert that all of the above described items are part of the estate of Laura L. Jeffords, which P has failed and refused to turn over to D Executors.

Defendant Executors ask judgment:

- (1) Requiring P to transfer and deliver to them all assets and property of the estate in her possession.

(2) That the aforesaid property in the registry of the Court be declared assets of the estate.

(3) That in the event P has sold or otherwise disposed of any of the other assets claimed, that a money judgment be entered against her for the value of said assets.

NOTE: At pretrial, D executors asked to amend the counterclaim to include a prayer for attorneys' fees. P, as counter-D, did not consent.

ANSWER TO COUNTERCLAIM:

Plaintiff denies that any of the items claimed by executors in their counterclaim are assets of the estate of Laura L. Jeffords.

With respect to items (b) and (c), the P's position is (1) that item (b) consisted of the sum of \$1,220.00 rather than \$1,238.00, as claimed, and (2) that said items were included in the cedar chest which was given to her by deceased on or about December 17, 1959.

With respect to item (d), P denies having or ever having had possession of said item, and denies all knowledge concerning same.

With respect to item (e), P says that the said item was given, transferred and delivered to her, and accepted by her as a gift to her from the said decedent during the decedent's lifetime.

With respect to item (a), P says that the two (2) United States Government Coupon Bonds of the face value of \$5,000.00 each, were on or about September 4, 1959, transferred and delivered by the decedent to the P pursuant to the terms of an agreement, arrangement and understanding between said decedent and the P, whereby said bonds became the property of the P, either absolutely or subject only to a condition subsequent or implied trust, which said condition or implied trust has been fully performed and carried out by the P.

On or about the said date of September 4, 1959, the decedent, Laura L. Jeffords, seeking to protect herself against the vicissitudes of a possible protracted illness, and to provide the P with the financial means for assistance to the said decedent under such circumstances, proposed that the P buy said bonds from her in consideration of the sum

of \$25.00, and in further consideration of the P's agreement to keep said bonds so that they or the proceeds therefrom could be used by the P if called upon by the decedent, or if the decedent's circumstances and needs required the use of said bonds or the proceeds thereof for the maintenance, care and support of said decedent and to prevent the decedent from being transferred or placed in a nursing home or other institution. In connection with such transaction, agreement and understanding, the decedent expressed the intention and actually intended that said bonds were to become the absolute property of P without any reverter of all or a portion of the value thereof to the decedent or her estate in the event that decedent's financial or personal circumstances did not require physical or financial assistance from P.

Plaintiff contends the legal effect of the circumstances and transaction recited above was to effect the transfer of title to said bonds to her either by virtue:

- (a) of a contractual agreement,
- (b) for valuable consideration, or
- (c) as a gift.

Plaintiff reserves the right to rely upon any of said legal theories.

Plaintiff therefore denies that D Executors are entitled to any of the relief sought in their counterclaim.

THIRD-PARTY COMPLAINT (D Executors vs. Harlow C. McCord)

Defendant Executors assert that third-party D, husband of P Estelle S. McCord, actively assisted her in removing the various assets which D Executors assert in their counterclaim are assets of the estate which were or are held by P, and/or 3d-party D.

Defendant Executors assert that in addition to the items which have been deposited by P in the registry of the court, third-party D, individually or in concert with P, removed and concealed the items designated as (c) and (d) in their counterclaim.

Defendant Executors assert that the value of said assets in addition to those in the registry of the court, is in excess of \$3,000.

Defendant Executors ask judgment against third-party D:

(1) Enjoining him from disposing of any and all property belonging to the estate of Laura L. Jeffords.

(2) Requiring third-party D to transfer and deliver to the executors all of the assets and property of the estate of Laura L. Jeffords held or controlled by him.

(3) A money judgment against third-party D for the value of any assets of the estate sold or otherwise disposed of by third-party D.

(4) Attorneys' fees and court costs.

ANSWER TO THIRD-PARTY COMPLAINT:

Third-party D denies all allegations of the third-party complaint.

Third-party D asserts that he has not and has never had possession of or asserted any claim to any of the items of money or property referred to in the complaint, counterclaim, or third-party complaint.

Third-party D asserts further that he is not a proper party to this action, but insofar as material to his defense herein, he adopts en toto the positions taken by P.

STIPULATIONS:

Facts under "UNDISPUTED FACTS".

It is stipulated that the following may be admitted without formal proof of authenticity, subject to all other objections:

- | | |
|------------------------|--|
| P's PT Exhibit No. 1 - | Cancelled check dated 9/4/59, payable to and endorsed by decedent, drawn by P on Riggs Bank. |
| P's PT Exhibit No. 3 - | Receipt signed by Charles B. Sullivan, Jr. for certain jewelry and cash therein described. |
| D's PT Exhibit No. 1 - | Copy of Power of Attorney from Laura Jeffords to James F. Bird. |

Any other documents initialled by all counsel prior to trial.

No stipulation is made with reference to the following:

- P's PT Exhibits 2 and 2A - Copy of letter dated 1/9/61 from Sullivan to Gray and enclosure.
- D's PT Exhibit No. 2 - Handwritten memo, 'To Whom It May Concern', dated January 10, 1955 and signed "Laura L. Jeffords".
- D's PT Exhibit No. 3 - Typed memo dated Oct. 16, 1959, signed "Laura L. Jeffords".

Counsel agree to exchange within thirty days the names and addresses of all witnesses known to them, including expert witnesses but exclusive of impeachment witnesses (filing a copy of said list with the Clerk of the Court), and if they learn of any additional witnesses prior to trial, they will exchange the names and addresses promptly.

Counsel for P asserted at pretrial that he has learned recently that one of the witnesses named by both parties in their answers to interrogatories, Neane Michalka, a nurse who attended decedent for some time prior to her death, is in California and does not plan to return. Counsel for P therefore asked a stipulation that her deposition may be taken in California, for use at the trial. Counsel for Ds did not agree. In view of the fact that this witness is in California, the Examiner instructed counsel to take the question up with the Pretrial Judge. (Counsel for P agrees to give Ds the address of this witness within 5 days.)

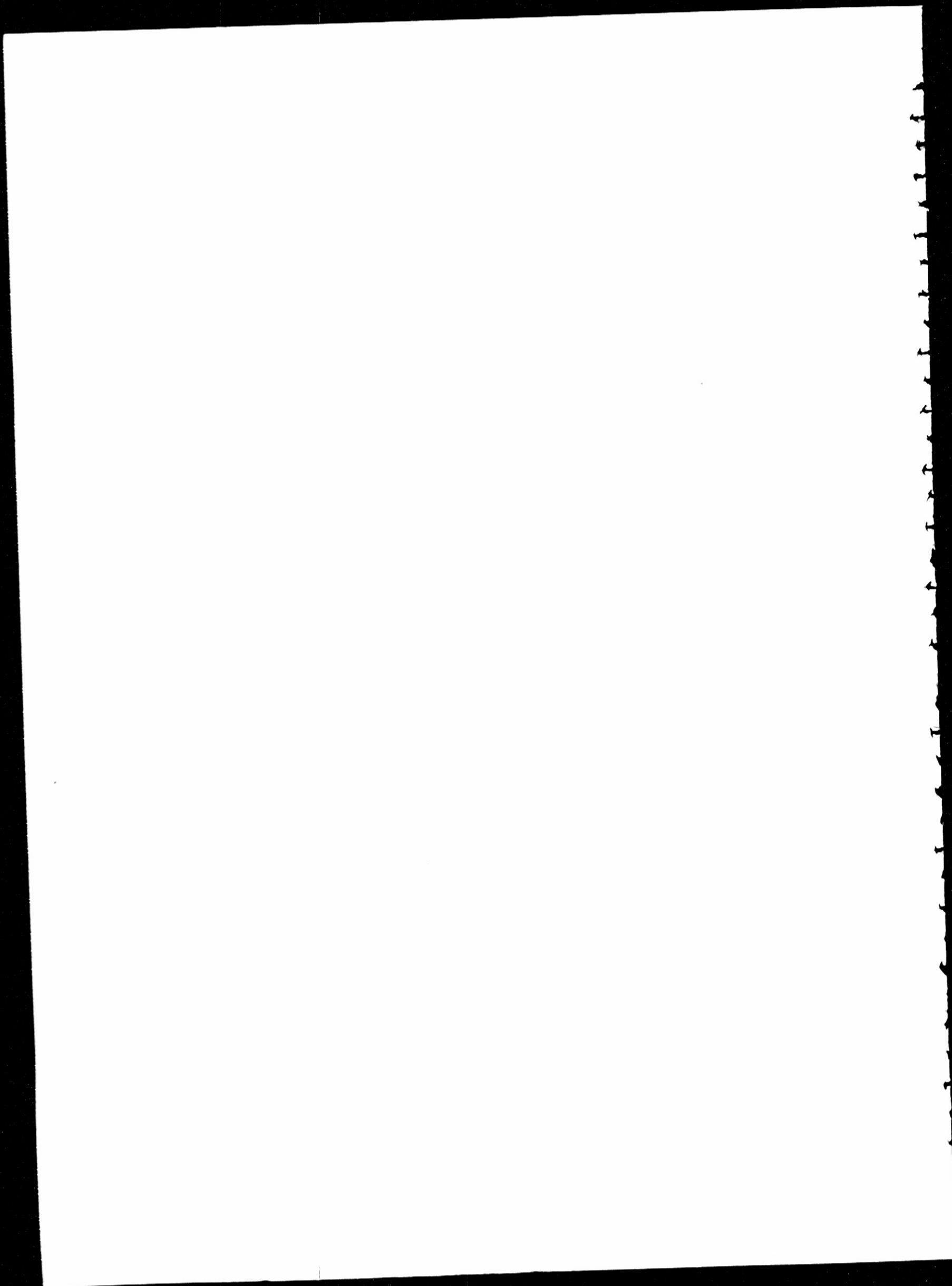
The Examiner has requested counsel to come to the trial with the maximum authority to settle the case which will be allowed them by their principals.

Trial Attorneys:	For P	- John L. Laskey
	For Ds	- Herbert P. Leeman
	For 3d-party D	- John L. Laskey

/s/ Elizabeth Bunton
ASSISTANT PRETRIAL EXAMINER

Attorneys:

/s/ John L. Laskey	For Plaintiff & Third-Party D
/s/ Herbert P. Leeman	For Defendants



EXCERPTS FROM TRIAL PROCEEDINGS

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Washington, D. C.
Monday, September 16, 1963

Trial of the above-entitled cause came on for hearing before the HONORABLE DAVID A. PINE, United States District Judge, and a jury, at 11:40 o'clock a.m.

APPEARANCES:

For the Plaintiff and Third Party Defendant:

JACKSON, GRAY & LASKEY - BY JOHN L. LASKEY

For the Defendants and Third Party Plaintiffs:

BY HERBERT P. LEEMAN

* * * * *

64 Whereupon,

ESTELLE S. MC CORD

was called as plaintiff, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LASKEY:

Q. Would you state your full name, please? A. My name is Estelle Smith McCord.

* * * * *

A. I was born June the 10, 1908, in Washington, D. C.

* * * * *

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Q. And did you at that time know Mrs. Jeffords, and what was her name at that time, if it was different from Jeffords? A. She was then Mrs. William A. Paul. She and Mr. Paul lived at 73 R Street.

* * * * *

Q. And were they friendly with your mother and did you have an association with Mrs. Jeffords and Mrs. Paul? A. Yes. We were neighbors. I mean we played out front. We knew Mr. and Mrs. Paul. They were kind to us, they had no children, and we were just good friends.

* * * * *

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Q. Now, describe for his Honor and the jurors, if you would, the progress of your relationship with Mrs. Jeffords over the years, down to the time, or up to, rather, the time when you left normal school.

Don't give us every detail but, in general, tell us what the relationship was. A. It was a close relationship. We knew one another. Mr. and Mrs. Paul would take us on street car rides, they would buy us candy, they would read us stories. I mean, we would go on picnics. They helped my mother take care of her children, you might say, just by kindnesses.

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My mother was employed. At that time Mrs. Jeffords would sort of look after us. I had an elderly uncle that lived in the house with us, but she sort of watched us, too. And as we grew a little older, I had been told that Mrs. Jeffords would liked to have adopted me. My mother loved her children and wanted to keep them, so we remained as a family. I also had a grandmother and a grandfather that would look after us also.

But, because of the houses being very close on R Street, we knew, we just knew Mr. and Mrs. Paul very well.

As Mrs. Paul was always interested in what we were doing in school, how we were progressing, I had gone to high school, I had gone to Wilson Teachers College. Mrs. Paul was an influence on my life. She wanted me to have advantages. We discussed going to college. I would liked to have gone to college after normal school. I couldn't go. I mean I couldn't afford to go. My mother couldn't afford to send me, but Mrs. Paul and my mother talked about it and they agreed that I would go and live with Mrs. Paul at that time and she would help bear the expenses for a college education.

MR. LASKEY: Let me interrupt you.

Was Mrs. Paul widowed at that time?

THE WITNESS: This was shortly after Mr. Paul had died, and she was -- she did -- she had also moved to 2707 Woodley Road. Mr. Paul had died. She had rented rooms at 2707 Woodley Road for a number of years, but I went there, I helped her with the house, I helped her

68 with the correspondence, I did errands, anything Mrs. Jeffords would like me to do, I would. I think she tried to make it possible for me to do the things I wanted to, educationally speaking.

BY MR. LASKEY:

Q. How far did you go with your education? A. I did not graduate before I was married. I did graduate after I was married. I was married in 1930.

Q. Now let me ask you this. You may have said it and I may have been thinking of the next question and missed what you said.

Did you actually get financial help for your tuition and the expense of your education from Mrs. Paul? A. Yes, I did. Mrs. Paul did not pay all of the expenses. She gave me what I needed.

Q. Now, prior to your marriage to Mr. McCord, and that you said was in 1930? A. Yes, sir.

Q. Did there take place any event concerning travel that involved Mrs. Paul and you? A. Mrs. Paul, she was Mrs. Paul at that time, took me to Europe and we were gone approximately two and a half months to three months, and went to many countries in Europe. We went aboard
69 the Rotterdam, that was the name of the ship, and that was 1928.

Q. And who paid the expenses of that? A. Mrs. Jeffords took me.

Q. She was still Mrs. Paul, though. A. She was still Mrs. Paul at this time, yes.

Q. Following your return, what was the relationship between you? A. The same relationship. I mean I lived in her home. I lived in Mrs. Paul's home from 1927 until I was married in 1930. I was married from Mrs. Jeffords' home. She made much of my trousseau, and my mother and Mrs. Paul and I was teaching at that time; together we paid the expenses of the wedding and reception and all of the things that, let's say, any young woman would like to have.

Q. Was it a church wedding? A. Yes, it was.

Q. With a reception following it? A. The reception was in the church.

Q. Now, following your marriage, where did you take up residence?

A. I lived in the Lorraine Apartments at Connecticut Avenue and Legation, 5245 Connecticut Avenue, Northwest.

70 Q. What was the nature of your association with Mrs. Paul from that point forward, in summary? A. Our relationship continued. It was always the same.

Mrs. Paul was interested in what I was doing. We did things together. I think Mrs. Paul was an influence on my life, I mean she was ambitious for me, she wanted me to grow to be a woman that she could be proud of. She also would try to help me, and advise me in the right way.

Q. Did there come a time when Mrs. Paul married Tracy Jeffords?

A. Yes.

Q. When was that? A. I don't know exactly the date, but it was when I had small children.

I taught school for five years after I was married, then I had three small children which made it impossible for me to spend as much time with Mrs. Jeffords that I had before. Besides, Mr. and Mrs. Jeffords had a different range of friends at that time. She was occupied doing things with Mr. Jeffords and other times she had that companionship.

Q. What was the relationship, if any, between Mrs. Jeffords and your children, and what interest, if any, did she express in them?

71 A. She always expressed interest in my children. When my children were small, she gave them money and gifts, she started bank accounts. Also, when they were married.

During their lifetime she gave them many nice things: clothing, some toys. She enjoyed them. She was not the kind of a person that was interested in just having children around the house all afternoon, but she did like to visit and see them and that was wonderful.

Q. Did there come a time that Mr. Jeffords died? A. Yes.

Q. Do you know approximately when that was? A. It was approximately ten years before Mrs. Jeffords died.

Q. That would make it in 1949? A. In that area, yes.

Q. Now the social and family relationship between you and Mrs. Jeffords continued approximately as you have told us, up until 1949; is that correct? A. The association continued always. It never had stopped. But there was a difference in association, it wasn't as frequent as it was before Mrs. Paul had become -- when she was Mrs. Paul, and

72 then Mrs. Jeffords, she was more occupied during that time.

Q. Following Mr. Jefford's death, what was the frequency and nature of the contacts between you? A. Well, I think we again started -- she was dependent again on me for doing some of the things that we had done together before. Mrs. Jeffords did not drive. I was glad to take her where she wanted to go. I was glad to do these things that she wanted me to do. My children were of an age now that I could also leave them, and resume this closer relationship than we had had before, and I also took care of some of the businesses for her.

Q. The things that you did together, tell us what they consisted of, e.g., luncheon, shopping, things of that nature? A. Well, if Mrs. Jeffords wanted to go down town to do any shopping, I would take her, we would have luncheon. If Mrs. Jeffords wanted to call on some friends of hers, I would take her. She had several friends out at Gaithersburg Methodist Home, and we went out there frequently to see people. Mrs. Jeffords was 89 when she died, and she had some older friends that she liked to visit and I would always drive her.

73 I wrote letters for her, I helped keep records for her for her income tax purposes. Just general services, I mean something that you would do for someone. Just the way you would do anything for someone in your own family.

Q. Now, in addition to the trousseau and the trip to Europe, and the assistance with the tuition for your education, had there been other gifts given to you by Mrs. Jeffords and had you, on occasion, given her anything? A. Well, yes. We had always exchanged birthday and Christmas presents through the years, but, besides that, there were many things that Mrs. Jeffords gave me. She gave me furnishings for my

house, she gave me china, she gave me some silver, she gave me some jewelry, and I would say, within the last five years of Mrs. Jeffords' life, she was interested in giving things that she had had.

Many times, when she would receive a wedding invitation from one of her friends, grandchildren, or something, she would take a piece of silver in her house and have it re-silvered, and use that as a gift.

Mrs. Jeffords said, "Estelle, I know that you have children and you enjoy pretty things. They will enjoy them. Just take care of them and give them to them. Use them. You have children who will enjoy them."

- 74 She gave me some rugs, she gave me -- well, when we were married, she gave me her silver tea service. And she had a large silver tray. I had a silver tray, too, it wasn't as nice as the one that Mrs. Jeffords had. When my oldest daughter, Elizabeth, was married, which was in December of 1956, she said, "Why don't you use this tray", because after the wedding reception, we were going to have people at home. And I did use it.

Afterwards when I took it back, she said, "Estelle, you have a lot more use of this than I do, I don't entertain any more, why don't you keep it?"

It had always gone on the buffet, standing up at the back of the buffet in the dining room.

And I said, "No, it wouldn't be the same coming in here without that tray there", and we didn't do anything about it.

In 1959 in June, my second daughter was married and she suggested that I use the tray, and she also said, "You would take better care of it and this is your birthday time again, so I am giving you this tray for your birthday," and that was the tray that went with the silver service.

Q. Now, had Mrs. Jeffords ever given your children anything?

- A. Yes, she had given all of them gifts through their lives, and when
75 they were married -- my son was not married before Mrs. Jeffords died, but they had both started Perpetual Building Association accounts.

Q. Did Mr. and Mrs. Jeffords have any children? A. No.

Q. What family relations did Mrs. Jeffords have in 1959 -- any kin? A. I don't know whether she had any kin. I did not know them. She had many good friends.

Q. Now, directing your attention particularly to the year 1959, what was Mrs. Jeffords' state of health? A. In the spring of 1959, Mrs. Jeffords was not feeling well. Mrs. Jeffords had always had problems with the intestinal tract. I mean, for a number of years she took pills.

This spring she was not feeling very well at all and she talked to me and said she thought that she may have the same kind of illness that her father had had. He had died with an intestinal disorder and she was feeling very, very sorry about her health. The outlook wasn't good.

I told her that I didn't think that she should make up her mind what was the matter with her, that she should go to a doctor and have an examination.

76 Q. Do you know whether or not she had a doctor? A. No, I do not know that she ever had a doctor.

Q. Did you ever have any knowledge of her having a doctor? What we generally refer to as a family doctor? A. As a family doctor, no. I know that a few years back she had had a fall and she had hurt her shoulder and she did have a doctor but I did not know that doctor.

Q. I interrupted you, but I wanted to find out that.

Now would you continue your account of this condition which she was concerned about her health and her intestinal tract? A. I suggested that she see a doctor.

Well, she didn't know a doctor, first, and she wasn't very much interested in it, and I told her that Doctor Alfred Richwine had been our family doctor for a long time, that he was a very fine diagnostician, and a very frank man, and a man that she could talk with and that I thought they could get along well together.

So she said all right, you make an appointment and we will go to see Doctor Richwine.

77 I made the appointment for her. She went to see Doctor Richwine. I was not in the room, I was waiting outside. And they talked and he suggested that she go to Groover, Christie and Merritt for some examinations, and he made the appointments for her. She went. I took her there. And that was two days of complete testing down there.

Q. When you took her to them, did you take her and drop her off?

A. Oh, no, I took her in and stayed with her and waited until she was finished and brought her home. I also stayed home with her that evening.

Q. Now following that test and whatever else was done, what was her condition? A. I think -- I know that the tests were rather rugged for a woman of her age, and she didn't feel very well, and that was the first time that this discussion of the bonds came up.

Q. Now, to the best of your knowledge -- excuse me just a moment. Does Your Honor plan to take a mid-afternoon recess?

* * * * *

78 Q. Now, Mrs. McCord, with respect to the bonds, first if you can, fix to the best of your ability the date, the time and the place where this discussion occurred? A. Mrs. Jeffords -- I don't know the exact date but it was in the spring of 1959 that we went to see the doctor. We had the examinations at Groover, Christie and Merritt. I am sure that the dates can be secured there.

And the next day, the next morning Mrs. Jeffords called me and she said, "Why don't you come on down, I don't feel very good but maybe we could go for a ride or go out to Normandy Farms for lunch."

I said, "Very well."

When I got down there, Mrs. Jeffords was at the dining room table in her home, and she had these two bonds, Treasury Bonds there, and she said, "Estelle, I don't know what's the matter with me or what is going to happen to me, but I want you to take these bonds and keep them. You will always have money to take care of me. It will not ever be a hardship on you. I want you to have these bonds."

Well, that wasn't necessary. Mrs. Jeffords came to my house. We had visited back and forth. I didn't need to be paid to take care of

79 her. And I said I just wouldn't do this, I was not interested, just forget about it, and we just left the things right there. But she did talk about it.

Q. Give us then the next time that there was a discussion about the bonds, and again, if you can, and just to the best of your ability, fix the time and place. A. I am sure it was -- I think it was the first part of September that I was at Mrs. Jeffords' again. I was in to Mrs. Jeffords' in between these times, but the discussion of bonds came up again in September, and she said, "You know, I always like to have a business arrangement --"

THE COURT: Like to have a what?

THE WITNESS: "Like to have a business arrangement" -- things done in a businesslike way.

I think I should, at this time, Mr. Laskey, tell how Mrs. Jeffords was the kind of person that liked to tell me what to do and I was accustomed to doing what she told me. Mrs. Jeffords was a secretive woman also; I mean, she didn't want everybody to know what she was doing.

When I was married, she told me that I should always try to have my own bank account so that I would be independent, and should be independent in these things.

80 When we first talked about these bonds, she said, "You don't have to tell Harlow anything about these. This is for you to take care of me. I will only say that as long as I live, the coupons shall be deposited to my credit in the checking account. I don't know what will happen. You can have them as your own after I die."

Well, I did -- I wasn't interested and I said, "Well, let's not discuss it any longer, we will not worry about it."

But the subject of the bonds came up several times and nothing was done about it.

But it was early in September I will be away, Mrs. Jeffords had been away, and I went down there again and here are these bonds back on the dining room table, and she said, "Estelle, I know how we can work this out. We will have a business arrangement." She said, "I

will sell you the bonds for \$25.00." I said, "Mrs. Jeffords, that isn't necessary, you don't have to go through this any more," and she said, "Well, you will feel better and I will feel better, so we will do it."

I did it. I wrote Mrs. Jeffords a check. I took the bonds. She said, "Take them to your house and keep them" so I took them to my house and kept them, and I kept them until I placed them in Mr. Gray's custody.

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* * * * *

Q. * * * Showing you what has been marked Plaintiff's Exhibit 1 for identification, I will ask you if you recognize that, and what it is, please. A. That is my check, and it is Mrs. Jeffords' signature.

Q. And what relationship does this check have -- A. That is the \$25.00 that I gave to Mrs. Jeffords for the bonds which was the arrangement that she wanted.

MR. LASKEY: I offer this in evidence, if the Court please.

* * * * *

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BY MR. LASKEY:

Q. Following that act, Mrs. McCord, was there ever any reference to the bonds or was everything done with the bonds or the coupons between you and Mr. McCord?

THE COURT: Now, that is double-barrelled. Can't you break it down?

MR. LASKEY: Very well, Your Honor.

BY MR. LASKEY:

Q. Will you tell us what other conversations transpired between Mrs. Jeffords and you with respect to the bonds? A. Well, it was after Mrs. Jeffords was ill and we were having a few problems in running the household, with day nurses and somebody cooking and somebody cleaning, there were a few problems, and I suggested that rather than try to run this whole house this way, it would be better for Mrs. Jeffords to go to a nursing home. I really had forgotten all about the bonds at this

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time, but Mrs. Jeffords hadn't.

She said, "Estelle, we have an agreement, and I will stay in my house as long as I possibly can, and if it isn't here, then you promised me yours."

That was a reference during Mrs. Jeffords' illness to the bonds.

THE COURT: I didn't get that.

Read that back.

(Read back by the reporter.)

THE COURT: Do you wish to examine her any further? That is something I don't understand.

MR. LASKEY: Yes, I was going to ask her to clarify that.

BY MR. LASKEY:

Q. Will you tell us if you can, in more detail, what was being referred to between Mrs. Jeffords and you and the promise or the agreement? A. I am sorry. When I suggested to Mrs. Jeffords that instead of trying to run this establishment hospital situation at 2707 Woodley Road, maybe it would be easier to go to a fine nursing home. And Mrs. Jeffords told me then, she reminded me of our agreement. She said, "We have an agreement. I am to stay here at my home as long as I can, and when I can't be taken care of in my home properly, I am going to your home." That was what she was talking about, Your Honor.

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THE COURT: Was that the last time there was a mention of the bonds, in conversation between you?

THE WITNESS: No, no. Before this time. When Mrs. Jeffords became ill in October, I lived at 3286 Chestnut Street, Northwest. I moved in October to 2928 Garfield Terrace, which was just two or three blocks at the most from Mrs. Jeffords'. Mrs. Jeffords was with us when we were looking for houses, and she was very happy we found one closer to her.

And I think it was approximately around the 20th or 22nd of October that we moved from Chestnut Street to Garfield Terrace, and I was staying at this time at Mrs. Jeffords' house because she had asked me to stay from the time she was taken ill, to stay right there.

She said, "Where are the bonds?", and I said, "Well, they are at my house but they are going to be taken care of."

She said, "Well, who is packing?", and I said, "Well, I am doing some of the packing. Elizabeth and Allen, mother, Harlow, and everybody is helping", and she said, "Well, you bring those bonds here until you have moved" and I drove home that afternoon and got those two bonds

85 and put them in the bottom bureau drawer of her bureau, and after we had moved I took them again to my house at 2928 Garfield Terrace.

Q. Was there any conversation between you and Mrs. Jeffords at the time you took the bonds back to your new house? A. She just said, "Take good care of them and remember this is our arrangement, and it is between us and you need not tell anybody what we have arranged."

Q. After the conversations that you have told us about, were there any other conversations between you and Mrs. Jeffords having to do with the bonds and your agreements? A. I don't remember.

Q. Now, were there any occasions between something was done coupons on the bonds? A. Yes.

Q. What was that? A. After Mrs. Jeffords had died and we had come back from the funeral --

Q. You say after Mr. Jeffords had died? A. After Mrs. Jeffords had died, and I had gone with Mrs. Jeffords to the body to Ohio, for the interment.

Q. You didn't understand my question.

86 Was there anything during Mrs. Jeffords' lifetime with respect to the coupons on these bonds? A. Only that as long as Mrs. Jeffords was living the coupons would be credited to her account.

Q. Well, how frequently did that occur? A. Well, I didn't have them that long. I just got them in September and Mrs. Jeffords died in December. I think there was only once that they were deposited in her account.

Q. Who went to the bank for the deposit? A. The thing that I want to say is that in September, Mrs. Jeffords and I went together.

Q. Did you take the whole bonds? A. No, we didn't.

Q. Or the two bonds, or what? A. No, we didn't. That was when we clipped the coupons and just took the coupons to the bank and she cashed them.

Q. Where were the coupons clipped? A. Right in Mrs. Jeffords' dining room.

That was where we did most of all our business work, clerical work, or records or anything.

Q. And following that, where were the bonds put? A. They went to my house.

87 There were other bonds that were in the cedar chest upstairs that were clipped and returned but these two that were given to me from the dining room table and were taken to my house.

THE COURT: Would you fix the fact amount of the bonds, please?

MR. LASKEY: Yes, Your Honor.

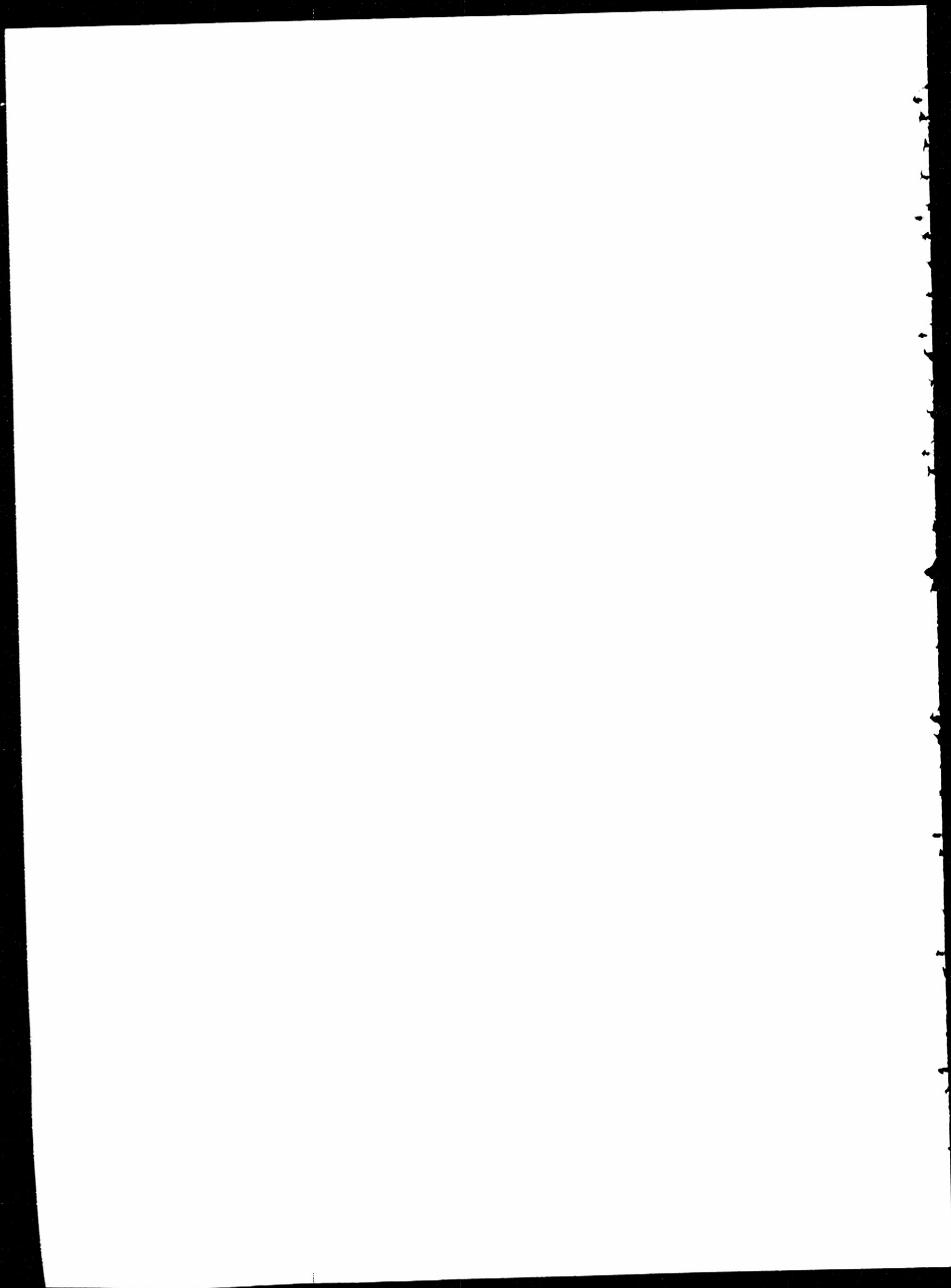
Q. Will you state how many bonds there were and what their face amount was? A. There were two bonds, and each one was for \$5,000.

Q. Who issued the bonds? A. They were Treasury Bonds.

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Washington, D.C.
Tuesday, September 17, 1963

* * * * *

91 THE COURT: Mrs. McCord will resume the stand, please,

DIRECT EXAMINATION (Resumed)

BY MR. LASKEY:

Q. Mrs. McCord, at the conclusion of yesterday's session we were discussing the bonds and without attempting to quote exactly, you had told us that the coupons had been clipped on at least one occasion in Mrs. Jeffords' living room and then returned to your house. Is that correct? A. Yes, sir.

Q. I also recall your testimony in the late afternoon yesterday that at one time the bonds were returned during the process of your moving from your house to a new house? A. Yes, sir.

Q. With those two exceptions, and for the period of time after this check and agreement between you and Mrs. Jeffords concerning the bonds and your taking care of her, where did the bonds stay for all of the rest of the time except those two instances? A. Is this prior to

92 Mrs. Jeffords' death?

Q. Yes. A. They were in my bookcase at home, at 2928 Garfield Street.

Q. Where in the bookcase? A. In a book -- the bookcase was in the recreation room.

Q. Did you continue in possession of those bonds for sometime after Mrs. Jeffords' death? A. Yes, I did. After Mrs. Jeffords died and we had been to Ohio and we came back, I showed them to my husband.

Q. Did there come a time when those bonds left your possession? A. And my husband thought they should be put in the safe deposit box at the National Savings and Trust Company.

Q. Was that done? A. Yes, sir.

Q. Did there come a time when you took them out of that box and turned them over to anyone? A. Yes, when I told Mr. Gray about it, I asked him if he would like to have custody of those bonds, and at that
93 time he said no. At that time Mr. Gray's office was in that same bank building.

Q. The National Savings and Trust Company? A. Yes, sir.

Q. At 15th and New York Avenue? A. Yes, sir. But if at any time he thought they should be in his custody, I could go downstairs and get them.

Q. Did there come a time when the bonds were given to Mr. Gray? A. Yes, I gave them to Mr. Gray at a later date. I don't know whether you want me to say that in the end of January there were coupons due and I believe -- I am trying to remember -- that one was clipped from each bond that had come due.

Q. And what did you do with the coupons? A. They were deposited in my bank account.

MR. LASKEY: I would like to have these bonds marked, if the Court please. I don't know whether it is proper to put identifying stamps on them.

THE COURT: No, no stamps will be put on them. There will be a tag with scotch tape placed on them.

94 I would like to have some dates fixed. She says later on this happened and later on that happened.

THE CLERK: Plaintiff's Exhibit 2 and 2-B for identification.

(The documents above-referred to, were marked Plaintiff's Exhibits 2 and 2-B for identification.)

MR. LASKEY: Your Honor was directing my attention to the last testimony about the clipping of the coupons?

THE COURT: No, no, that was sometime in January, as I understood it. But when she spoke to Mr. Gray and Mr. Gray gave her certain instructions, and when she turned them over to Mr. Gray.

You may make those inquiries if you care to.

MR. LASKEY: Yes, sir.

THE COURT: If you don't, I will when the time comes.

MR. LASKEY: I intend to. I thought I would complete this exhibit marking first.

BY MR. LASKEY:

Q. Mrs. McCord, let's try to be a little more specific with respect to the times of these incidents that you responded to my questions about this morning.

95 Following Mrs. Jeffords' death, do you recall when it was that there was a coupon clip, or would reference to the bonds themselves help you fix the date?

THE COURT: Did you say coupon, singular?

MR. LASKEY: I said plural.

THE COURT: I didn't understand. I thought they might have had different maturity dates.

I thought you said coupon.

You said coupons, plural?

MR. LASKEY: Frankly, Your Honor, I can't remember whether I used the singular or plural.

THE COURT: I would like to know.

MR. LASKEY: They have different dates.

THE COURT: Maybe if you showed them to her, it would refresh her recollection.

BY MR. LASKEY:

Q. Showing you what has been marked for identification as Plaintiff's 2 and 2-B, I will ask you if you recognize those bonds?

A. Yes, I do.

Q. Are those the bonds which are the subject of the transaction between you and Mrs. Jeffords about which you have been testifying?

96 A. Yes, sir.

Q. By reference to those bonds, can you tell us what the coupon dates are? A. Well, it says here that they are due two times a year; in June and in December. On one bond.

And on the other bond they are due in September and March.

Q. Now look at the slip on the back of each of those two exhibits and give that number and then say what dates are the coupon bonds are for Number 2 and Number 2-B. A. I have to find that piece of paper where they are marked 2 and --

Q. It is on the back of each one.

Take 2-A first, please.

THE COURT: It is obvious. One of them has coupons due in June and December, and another in September and March.

MR. LASKEY: I thought maybe you would like to have it identified to the exhibit numbers, Your Honor.

THE WITNESS: I can tell you this very definitely as to time, sir.

97 MR. LASKEY: Very well.

THE WITNESS: The \$18.25 coupon that was due in December was clipped late in January because I used this coupon as a deposit in my account. My son was graduating from Navy OCS at Newport in February, and that was his graduation -- what I used for his graduation gift. I gave him \$100 but this was making up, and I added the rest of the money to make it \$100.

BY MR. LASKEY:

Q. How long after that was it that you took the bonds from the safe deposit box and delivered them to Mr. Gray? A. I don't know exactly.

THE COURT: Well, was it months or years?

THE WITNESS: Oh no, no. This was all --

THE COURT: You say you don't know exactly. Approximately.

THE WITNESS: It was January, February, March.

THE COURT: Several months?

THE WITNESS: Yes.

THE COURT: All right.

MR. LASKEY: If the Court please, I offer the exhibits in evidence.

THE COURT: They will be received.

(The documents above referred to, heretofore marked Plaintiff's Exhibits 2 and 2-B, were received in evidence.)

BY MR. LASKEY:

Q. Now Mrs. McCord, directing your attention now to the fall of 1959, and particularly with respect to an incident when you and Mr. McCord had returned from the football game. Do you recall that incident? A. Very definitely.

Q. About when did it occur? A. It was on Sunday, October the 11th, 1959.

Mr. McCord and I had been to a football game.

Q. Did you receive a call after that? A. We had come back from the football game to feed our dog and take care of him and then we had been invited to a dinner party. While we were home taking care of the dog, I received a telephone call from a Mrs. Souder, over at Mrs. Jeffords' house. She told me that Mrs. Jeffords was ill.

Q. And in response to that call, did you go to Mrs. Jeffords' house? A. I went immediately.

99 Q. And what did Mr. McCord do, if you know? A. He left me at the house and went on to the party.

Q. What happened when you got there and what did you observe? A. Mrs. Jeffords said that she had had a headache and her stomach had been upset and she didn't feel well. She was lying on a sofa on a porch off her bedroom on the second floor. She had called me earlier in the afternoon, she told me, but had gotten no answer.

Mrs. Souder had gone to her daughter's, or daughter-in-law's for dinner and she was not there. Mrs. Jeffords called me again and I still wasn't home, and she called Mrs. Souder's daughter or daughter-in-law, whichever it was, that she was where she was, and Mrs. Souder came home. And it was Mrs. Souder -- that was by late afternoon. And then Mrs. Souder got me, I would say between 5:00 and 6:00 on Sunday, October the 11th, and asked me please to come down that Mrs. Jeffords was not well.

Q. And you went there and how long did you stay? A. I stayed until a little after 10:00 o'clock.

I wanted Mrs. Jeffords to have a doctor but she said that after Mrs. Souder had given her some tea and some crackers, she was feeling better and she didn't think that she needed a doctor then.

100 Q. Now, what occurred in the subsequent days with respect to Mrs. Jeffords' illness. A. The next morning before 9:00, Mrs. Souder called me again and said that Mrs. Jeffords was not feeling well. Would I come down.

She said that Mrs. Jeffords had fallen.

So I got ready to go, and before I left my house I called Doctor Richwine, who had attended Mrs. Jeffords and asked him if he would come down to see Mrs. Jeffords. Then I went on to Mrs. Jeffords, and when I got there she did say that she wasn't feeling very well and that she had stumbled. Mrs. Jeffords was a very proud woman. She didn't want to be ill, she was never ill, in her own mind. And so, after that, Doctor Richwine came and talked with Mrs. Jeffords and examined Mrs. Jeffords -- I was not in the room -- and told her that --

Q. You can't tell us what was said out of your presence.

A. All right.

Q. Now, following that, without detail as to minutie, what was the course of Mrs. Jeffords' physical condition? A. Doctor Richwine told me that he had told Mrs. Jeffords -- may I say that?

101 Q. Yes, you may. A. -- that he thought that she would be better moving around and doing things rather than going to bed and just staying still, and he suggested that she go out, take a walk. So she agreed that she would come to my house that day. So she got dressed and I took her to my house. We had lunch at my house. After lunch Mrs. Jeffords had a rest, we spent the afternoon. My mother was home. We talked. She said she was feeling better. I asked her if she would like to stay at my house and she said no, she thought that she would be fine at home.

And Mrs. Souder was there when I took her back. We had early supper for Mrs. Jeffords and we went back that afternoon and I left Mrs. Jeffords at Woodley Road. That was on Monday, the 12th of October.

Q. What was the course of the situation, without too great detail, from that point forward? A. The next morning I received another call from Mrs. Souder, and I called Doctor Richwine again and said that I was going to Mrs. Jeffords, would he come down, that the report was that she had had -- that Mrs. Souder had said that she was ill, so I
102 went down and was there for a while before Doctor Richwine came, and that was when he told Mrs. Jeffords that he thought that she should stay in the bed and rest, that she -- I don't know what the diagnosis was at that time.

Q. From that point forward, did she continue in the house and in bed? A. She was in bed then. She was up to go to the bathroom.

Later on, in this illness, she was up in a wheel chair before she went back to bed to stay.

Q. At what time, if at all, were nurses engaged, practical nurses or registered nurses? A. Mrs. Jeffords -- when Doctor Richwine ordered Mrs. Jeffords to bed, Mrs. Jeffords asked me to stay with her. I agreed that I would.

I think it was sometime during that week that I had talked to Mr. Bird when Doctor Richwine said that Mrs. Jeffords would have to go to bed, I called Mr. Bird and told him about it and he came over.

I also have said before that we were moving at this time. I knew that I couldn't take care of Mrs. Jeffords all day and all night and try to do the cooking, so we decided.

103 Q. Who do you mean by that? A. I mean Mr. Bird. I discussed with Mr. Bird the possibility of getting a nurse, and I called registry in the yellow pages from the phone book and got -- that evening I think she came, and this is in that same week she was taken ill, and Mrs. Rochambeau.

Q. That is the week of October 11? A. Yes.

THE COURT: Was this a practical nurse or a registered nurse?

THE WITNESS: Mrs. Rochambeau was a registered nurse, but I got her from the -- she was a registered nurse.

THE COURT: All right.

THE WITNESS: I am a little confused whether she was working out of the practical nurses bureau, though.

BY MR. LASKEY:

Q. How long was she there? A. I don't know exactly how long she was there. I would say approximately three or four weeks.

Q. And were there other nurses besides Mrs. Rochambeau during the period of October 11 through December the 25th? A. Yes.

104 Q. Do you recall who they were and the approximate times they were there, and who arranged for their attendance? A. I called the registry to get Mrs. Rochambeau, after discussion with Mr. Bird. Mrs. Rochambeau worked from 8:00 till 8:00. Ellie, the housekeeper-- Miss Gill, G-i-l-l -- had returned from her vacation by this time and Mrs. Jeffords had thought that she could take care of the cooking, but when Ellie came back, Mrs. Rochambeau thought that she was not capable enough to do that, and that we should have someone in the house to do cooking, laundry, things of that kind.

So we had a Lilly May Gilchrist come in.

Q. Who arranged for that? A. Mr. Bird.

Q. All right. A. Mrs. Rochambeau felt that someone should be with Mrs. Jeffords all night long, and I talked to Doctor Richwine about having a day nurse and a night nurse, and Doctor Richwine said that he had known of a Mrs. Timmons who did this kind of work. She was definitely a practical nurse -- would probably, if she wasn't on duty, that she could come in and take over at this time.

105 So I called Mrs. Timmons and she was not engaged at that time and I went to her house and picked her up and brought her to Mrs. Jeffords' home.

Q. About where are we now, in October or November? A. We are in October.

Q. And subsequently, were there other nurses? A. Yes. I was not there -- I was out of town, or over a weekend. I think this was late

October. And when I came back, they told me that Mrs. Rochambeau, and Mrs. Jeffords, and Mr. Bird told me that Mrs. Timmons had left.

Mrs. Timmons called me and asked me if I would bring some of the things that she had forgotten at Mrs. Jeffords, and I don't know whether I did or my husband delivered the things to her house.

Q. What other nurses were there later on? A. Then, following Mrs. Timmons, we got a Mrs. Wilhite, who was a regular nurse, and Mrs. Rochambeau was the day nurse, and Mrs. Wilhite was the night nurse.

Q. And what period of time did that embrace? A. Well, it would have to be into the end of October or the first of November.

106 Q. And how long did Mrs. Wilhite stay? A. Mrs. Wilhite stayed until the week before Mrs. Jeffords died. I think she left during the week that Mrs. Jeffords died.

Q. What other nurses came during that later period of time, if anyone? A. Mrs. Rochambeau and Mrs. Wilhite were the nurses, the second set of nurses or the second pair, and Mrs. Rochambeau had always worked 8:00 till 8:00, and when you have another registered nurse come in or one that does this kind of duty regularly, it seems that the hours are 7:00 to 7:00. And Mrs. Rochambeau was not interested in working 7:00 to 7:00, and there was a disagreement and Mrs. Rochambeau left.

And to replace Mrs. Rochambeau we had a nurse, a Mrs. Sarah Cole, C-o-l-e, recommended by Mrs. Wilhite. So Mrs. Sarah Cole was the day nurse and Mrs. Wilhite was the night nurse.

Just after Thanksgiving. Now, Mrs. Jeffords now has improved to the place where she has a wheelchair and is walking some about the house. But some way in this process Mrs. Cole pulled her back muscles, so it was necessary to replace Mrs. Sarah Cole, and I think Mrs. Cole said to call registry, which I think it was the Virginia registry, and
107 we asked for another day nurse, and that was when a Mrs. Michalka became the day nurse.

So Mrs. Michalka was the day nurse and Mrs. Wilhite was the night nurse.

Q. Was that in December? A. Yes.

Q. And then? A. And then early in the week that Mrs. Jeffords died, I don't know whether it was Sunday night or Monday night, Mrs. Wilhite was then the night nurse, but I don't know whether it was a Sunday morning or a Monday morning when Mrs. Wilhite called and said she had the flu and that she would not be able to come back.

Well, we needed to replace Mrs. Wilhite, and being the Christmas week, it was difficult to get a night nurse, so Mrs. Michalka agreed to take the night duty with Lilly May Gilchrist helping her, and a Mrs. King became the day nurse and she was the day nurse from that time until Mrs. Jeffords died.

Q. Now, at any time during this period from October 11 through December 25, did you spend any nights at the Woodley Road house?

108 A. Yes, I did.

Q. Briefly, what periods of time were you there at night? A. In the beginning I was there four or five or six nights.

I was there every day except the times that I was out of town, and I would say the last ten days of Mrs. Jeffords' life, I stayed three or four days and nights.

Q. Now, Mrs. McCord, I am going to direct your attention first to the period of time from October 11 through the third week of December, 1959, and ask you with respect to that, whether during that period of time there were any discussions concerning the cedar chest and its contents between you and Mrs. Jeffords? A. Yes.

Q. Was that discussed? A. Yes, it was discussed several times.

Q. Now still within that framework, that period of time, can you recall approximately when the first discussion occurred and where it was? A. It was in the first week of Mrs. Jeffords' illness that she said, "Remember, Estelle, that cedar chest is yours, and you can take
109 it, you may take it any time, but, before you take it, be sure you take a box out of it and give it to Ellie. There is a box in there with blue string around it and that is Ellie's."

And I said, "Let's leave the cedar chest where it was."

Q. I am now directing your attention to a period of time prior to October 11, 1959. Had the cedar chest and its contents been discussed between you and Mrs. Jeffords before October 11, 1959? A. The cedar chest had been discussed many years before that. Mrs. Jeffords told me that the cedar chest was always mine.

I think it was around -- well, it was while my son was at Randolph Macon Military Academy, which would be before 1954, and she told me then, she said, "Estelle, the cedar chest is yours. I have made a will. I did not name you in the will. There are things in the chest that I want you to have, that your children can have, and there are other things in the chest I am giving to you instead of mentioning you in the will."

That was years ago. I mean, Mrs. Jeffords had even said it to other people, "The cedar chest always goes to Estelle", in different
110 conversations.

Q. Now, following this conversation in the first week of the illness beginning October 11, 1959, were there other discussions or other references to the cedar chest and anything that might have been in it?

A. I don't understand, Mr. Laskey.

Q. Did you and Mrs. Jeffords have any other occasion to refer to the cedar chest following that first time? A. Yes, sir.

Q. Fix the dates as best you can, please, and give them to us in chronological order, the substance of the discussion. A. This is prior to Mrs. Jeffords' illness?

Q. No, we have gotten beyond that. A. Well, I think I should say that in this -- I mean I am going before Mrs. Jeffords' death.

Q. Going before that, I will withdraw that question and ask you concerning the discussions concerning the chest before October 11, 1959.

A. Mrs. Jeffords kept all kinds of records, receipts, things in this cedar chest. Inasmuch as I helped Mrs. Jeffords keep records, pay bills, doing secretarial work, we were in and out of this chest many

111 times, and she referred to "This will keep all in order, you know exactly where everything is. You will know about the bills, the bank books, and the other things in the chest are for you."

It was even my job to straighten it. I would help her. But that happened on and off. Mrs. Jeffords would want something out of the cedar chest. She would say, "Get this for me". With Mrs. Jeffords there, I went in the cedar chest. I never was in the cedar chest alone.

After Mrs. Jeffords was ill, there was one time -- well, I did give Ellie her box with a blue string around it.

Q. Was this after the illness beginning October 11? A. Yes.

Q. All right. A. Then also in early December, the 11th -- I am almost sure it is the 11th of December.

Q. How do you fix that date so exactly? A. Because I had a dinner party at my house.

Q. All right. A. I had house guests from Philadelphia. Mrs. Jeffords and I spent lots of our time sort of planning for this party. I mean, she loved parties. I mean, we talked about it, and she wanted to know if I had enough dishes, if I had enough platters, if I had enough
112 silver, things of that kind, and I said yes, I did, the only thing that I didn't have enough of were butter knives. And she said, "I have butter knives in the cedar chest. You know where the key is" -- which was tied on the bed next to hers, in her room -- "Get the butter knives and use them."

I did and I put them there to take when I went home. I probably put them in my pocketbook.

During discussion that afternoon, she said, "You know, Mrs. Lieb also needed extra butter knives, so when you get through using them, you call Mrs. Lieb and tell her that there are six butter knives for her."

And I called Mrs. Lieb, and told her that I had six butter knives, and they were delivered to her. The butter knives that I had left when I returned to Mrs. Jeffords' house and I put them back in the chest.

Q. Now, were there other conversations during the period from October 11 through the third week in December, 1959, concerning the chest? A. Several times Mrs. Jeffords had said, "I want you to take the chest". She early -- I say again, early, and I mean in the first

two or three weeks of her illness -- she had repeated to me that the
113 chest was always for me, that I was not mentioned in her will, and
giving me the chest would make up for it. And she said, "I want you to
make arrangements to take the chest."

Well, I really and truly didn't think it was that important, so I
didn't make arrangements.

It was in -- several times Mrs. Jeffords reminded me about, "You
haven't made arrangements to take the chest", which I hadn't. And it
was in December, the second week of December, Mrs. Jeffords -- I
was sitting there. I used to write letters and read and do errands for
her. I was writing letters that day, and she had a -- her breathing
became belabored, and I thought certainly she had had or was having a
heart attack, and her eyes, they closed. And when she roused she looked
at me and she says, "Estelle, you thought I was going to die", and I
said, "Yes, I did."

And she said, "And the chest is still here. If you don't make plans
to take it, you won't be able to have it because it is not in the will. I
had hoped to do something about it during this period but I haven't been
able to change anything. The will is not a very good one."

So I said, "Well, very well, I will."

114 I really didn't do anything right then but Mrs. Michalka was the day
nurse at that time and she was there, and I think it was the next day
Mrs. Michalka said, "Mrs. McCord, Mrs. Jeffords worries about the
chest and she really wants you to have it. Why don't you take it?"

So I went to Mr. Bird and told Mr. Bird that Mrs. Jeffords had
given me the chest and would it be all right to move it from the house.

And Mr. Bird said, "Yes, it was all right."

The next day was Saturday. Saturday was a good day because my
son-in-law would be home, my husband, I thought would be home. I
stayed all night at Mrs. Jeffords. I was staying at Mrs. Jeffords all
night at this time.

I called my home to have Mr. McCord come to Mrs. Jeffords', and he was not there, he was at the office. My son was at home. He was at home on Christmas vacation, and he called his father. I called my son-in-law and asked him if he would come to Mrs. Jeffords'. I asked Douglas to call his father and ask him to come to Mrs. Jeffords to move the cedar chest.

Q. Did they come? A. They came.

Q. And that Saturday morning would have been? A. This, I would
115 say, was the Saturday before Mrs. Jeffords died. She died on Christmas Day, which was a Friday, and this is the Saturday before.

Q. So that would be December the 19th, according to the calendar I have here? A. Yes, sir.

Q. What was done after they got there? A. I did not -- I was not downstairs when either one of them came. I was upstairs doing something. The cedar chest had been moved from Mrs. Jeffords' bedroom into the hall.

Q. How had that been done; do you know? A. Well, I don't know whether Mrs. Michalka, Lilly Mae and I pushed it out, or -- but I know it was taken out. Mrs. Jeffords didn't want anybody in her room, or, well, anyone that was not very close, because she was a proud woman and she didn't want people to see her, at least not at her very best.

So that chest I recall it was put in the hall for Mr. McCord and Robert Collier to carry down the steps and out the front and to my house on Garfield Terrace.

Q. Now, can you tell us whether or not Mr. Bird was present when
116 Mr. Collier and Mr. McCord came? A. Yes, Mr. Bird was there.

Q. All right, was the chest taken out? A. The chest was taken out.

Q. Did you hear any conversation between Mr. Bird and either Mr. Collier or Mr. McCord? A. No, I didn't.

Q. Do you know whether or not anything else was taken out of the house at that time? A. I don't know to my own knowledge, I mean that I saw. I only know that at my house with the chest was a picture, and

when I inquired about it, my son-in-law said Mr. Bird had asked him to take it over to my house when he took the chest.

Q. Now after that when the chest was at your house, did there come a time when you had a discussion with Mr. Bird about the chest?

A. Yes, sir.

Q. And where was that discussion first held? A. In Mrs. Jeffords' house, after I had had the chest moved to my house, the next morning I think it was, this was on a Sunday morning. I was thinking about the chest and I thought someone should know exactly what was in the chest,
117 so I asked Mr. Bird if he would come to my house and we would go through the chest together. And Mr. Bird said, "Yes, we could do it", and we did it on Monday. The chest went on Saturday, Sunday we were at the house. Monday morning before noon Mr. Bird and myself went to my house to find out exactly what was in the chest.

I put up a card table in the recreation room because that is where the cedar chest was, and we went through -- I mean, the cedar chest was between us, on the side of us, on the right side of us, on my right, Mr. Bird's left, and the card table between us, and I would pick things out of the chest and put it on the table for Mrs. Jeffords to look at --

Q. You said Mr. Jeffords. A. I mean Mr. Bird, to let Mr. Bird see what they were.

There were many things in there. I mean, one of the things that, Mrs. Jeffords' birth certificate, and things of sentimental value that I knew were there, plus these envelopes of receipted bills.

There were some gloves and some linen. There were several
118 folders that had stock certificates and securities in it. There was a brown envelope that, as far as I was concerned, was a bond. Some scissors and little pieces of fur. Some pictures. There was a dress made, and two Spanish shawls.

But Mr. Bird would say, "Well, we don't need that" and that would go in the wastebasket, and these other things that he opened and looked at, I just handed them to him and he would open them and look at them and they went in a special pile.

So after we had been through the chest, Mr. Bird said that this was Mrs. Jeffords' business and he should take it to Woodley Road. And I said that Mrs. Jeffords had given me the cedar chest and the contents, and Mr. Bird said that we would have to see about that.

But I completely trusted Mr. Bird, I was agreeable to the whole thing, there was no question raised at any time. I gave them to Mr. Bird to take back to record them.

Q. Did he make any list of them in your presence? A. No, sir.

Q. Did you ever get any list of the items from him that he had taken from the chest? A. No, sir. Mr. Laskey?

119 Q. Yes. Did you have a matter you overlooked? A. I forgot something that was in the chest.

Q. All right, would you refer to it and tell us what it was? A. Yes. There was some money. I don't recall whether \$5.00 or \$10.00 or \$20.00 in several different places. And it amounted all put together to \$120.00. And that money Mr. Bird saw. It was put in an envelope there and Mr. Bird said, just to keep that in the chest. In fact, he said that would help to pay some of my gasoline expenses.

THE COURT: Help to do what?

THE WITNESS: Help to pay some of my gasoline expenses.

BY MR. LASKEY:

Q. You had been using your car in connection with the running of the household and taking Mr. Bird to your house and other things?

A. Yes, sir.

Q. Now, directing your attention to the time you and Mr. Bird were going through the contents of this chest, I think you used the expression "special pile".

120 What do you mean by that and what was in the so-called special pile? A. Those were Mrs. Jeffords' securities. And Mr. Bird had two or three -- there was a smaller folder, sort of a leather folder, and there was a brown envelope and then there was an accordian type envelope. And Mr. Bird made various groupings of the things he was

examining, and put them all into an accordian envelope and those were the things that he took with him.

Q. You referred to them as securities. How do you identify them as such? A. Well, I knew some were stock certificates because I had examined them myself in Mrs. Jeffords' house.

One of the things that I did for Mrs. Jeffords was to keep a record for her, for her income tax purposes, and we would get the things out of the cedar chest, we would put them out on the table down in the dining room for me to make these copies, so I recognized what some of them were, whether I even opened them or not.

Mr. Bird opened them and looked at them.

Q. Did you at that time make any list of the items which you saw Mr. Bird take? A. No, sir.

121 Q. Are you able to tell us what companies were represented by these securities or certificates? A. I am almost certain that I know some of them. I could not possibly tell you all of them.

Q. Identify those that you are reasonably certain of. A. Well, one I can identify very easily because the last week of August I went to Ames, Iowa to a workshop. Mrs. Jeffords had some stock certificates and stock in the, I think it was the Des Moines Railroad Company. And she said that she hadn't been able to get communication, and she had written. Would I take it with me and, if I had time, stop in Des Moines and find out about this. And we got it out of the cedar chest and I had it. But it was folded this way, and for me to carry it in my pocket book, it was folded down. That I very definitely remember because it was folded longways and over again, and over, to fit in the pocket book. So that one I could identify as the Des Moines one.

THE COURT: Now, what is this, Des Moines what, railway company?

THE WITNESS: Yes.

122 THE COURT: A bond or a stock?

THE WITNESS: It is a stock certificate, or bond. A stock certificate.

THE COURT: And for how many shares?

THE WITNESS: I do not know. I cannot tell you.

There was another one that was a stock certificate from Johns-Manville, Bristol and Meyers, Sperry-Rand, Merwin Kohler.

BY MR. LASKEY:

Q. Do you know how many shares were issued in the names of any of these companies? A. I cannot tell you the number of shares. It was not important because when I was making my records, they were right in front of me and I could just copy them down. But I would not remember what each one said.

Q. Do you recall in total with respect to all of the securities on this occasion when you and Mr. Bird were sorting the items from the chest, how many certificates there were? A. No, sir. I made no count, no record.

Q. How long was Mr. Bird there on this occasion? A. I suppose we were there for an hour, hour and a half.

123 Q. Did anyone else come into the room or go by the room, or come in the place where they saw you and Mr. Bird? A. When Mr. Bird and myself got to my house, no one was at home, but while Mr. Bird and myself were going through the things in the chest, my mother came home. She had been away for the weekend. She didn't know that Mr. Bird was there and she came right on down. And she said good morning, or "Hello", or something, "I am home", and then she left us.

Q. Did she know Mr. Bird? A. Yes.

Q. Did she speak to him? A. I think she said "Good morning, Mr. Bird."

Q. Could you tell me how long this whole transaction took? A. You mean with my mother speaking to Mr. Bird?

Q. No, I meant the entire time Mr. Bird was there.

I think I asked you but I have forgotten whether I got your response.

A. I said between an hour and an hour and a half we were over there.

Q. And where did you go after that? A. I took Mr. Bird back to 2707 Woodley Road. I stayed there also.

Q. Was there anything else with respect to the chest which occurred from that time up until the time of Mrs. Jeffords' death that you recall?

124 A. I know, yes, there is something else I forgot.

In the cedar chest was a chest of silver, old silver.

Q. You have gone back now to the question I asked you about the contents of the chest and what happened when Mr. Bird was there?

A. Yes.

Q. All right, I will withdraw the other question, and you can tell us about that. A. I took the silver chest out of the chest and showed Mr. Bird the silver that was in the silver chest. He said "What's in there", and I said, "Well, it is all old silver." "Some of it is sterling and some of it isn't."

And he looked through it and he said, "Well, just keep it."

I did not put the silver chest back in the cedar chest.

I also -- I don't know whether this is important or not --

Q. Does it involve a conversation with you and Mr. Bird? A. Yes.

Q. Tell us what it was. A. I told Mr. Bird that with the gift of the cedar chest and the silver, and all these things, that I thought that I
125 should -- that I would have to file some sort of a report -- and he said, "Why, I don't think you have enough to make a report on. You are allowed so much, so you don't have to worry about it."

And, again, I said, "Well, what about the stock certificates", and he said, "Well, the Court will have to decide that."

Q. Now, following that occasion and following your return to Woodley Road house, Mrs. Jeffords' house, were there any significant discussions or transactions or events which in any way related to the cedar chest up until the time of Mrs. Jeffords' death? A. I don't exactly know what you mean.

Everyone knew that the chest was taken to my house. Everyone knew that Mr. -- well, not everyone, but the nurses, Mrs. Souder, knew that Mr. Bird had been to my house to inventory the cedar chest.

Q. Now, Mrs. Jeffords died on Christmas Day, is that right?

A. Yes, sir.

126 Q. Following that was there an occasion when Mr. Bird or anyone else came to your house and there was a discussion concerning the chest and any other items? A. After Mrs. Jeffords' death?

Q. Yes. A. Yes.

Q. Who came to your house? A. In January --

Q. Of 1960? A. 1960. Mr. Sullivan, who was a lawyer but was helping to administer Mrs. Jeffords' estate with Mr. Bird --

THE COURT: What is his name?

THE WITNESS: Mr. Sullivan, sir.

BY MR. LASKEY:

Q. Would that be Charles B. Sullivan? A. That is right, Charles B. Sullivan. He called me on the telephone and asked me if I had some jewelry that belonged to Mrs. Jeffords, and I said, "Yes, I have." He wanted to know if he could come and get it, and I said yes, he could come. And he said, "Well, shortly?", and I said, "I am having some people for lunch today, and cards, could you come in the early evening before dinner", and he said, "Yes."

127 So that evening Mr. Bird and Mr. Sullivan came to my house.

Q. All right, let me stop you right there.

MR. LASKEY: I am having an exhibit marked, Your Honor.

THE CLERK: Plaintiff's Exhibit Number 3 for identification.

(The document above-referred to, was marked
Plaintiff's Exhibit Number 3 for identification.)

MR. LASKEY: And this receipt.

THE CLERK: Plaintiff's Number 4.

(The document above-referred to, was marked
Plaintiff's Exhibit Number 4 for identification.)

BY MR. LASKEY:

Q. Now, Mrs. McCord, directing your attention not to the conversation with Mr. Bird and Mr. Sullivan when they came to your house, but to any events relating to jewelry of Mrs. Jeffords during her last illness: Did she have jewelry? A. Yes.

Q. About her person while she was ill? A. Yes, sir.

128 Q. Will you describe the occasions relating to that jewelry and what transpired in connection with it? A. When Mrs. Jeffords was taken ill, she was wearing her wedding band, her engagement ring, and another ring on her right hand, a two-stone diamond ring. The wedding band had some diamonds in it. The engagement ring was a large solitaire diamond, and the one she was wearing on her right hand was a two-stone diamond ring, sort of set on an angle.

One night when I was not there -- well -- but Mrs. Flemming stayed with her this night, her hands had become thin and the rings were loose, and it was suggested, by whom I don't know, that the rings be put in a little cloth bag and pinned to Mrs. Jeffords' undervest.

It was Mrs. Jeffords' habit also to have a little pocket sewn inside her undershirt. She had done this for this shirt. I have sewn many in for her.

Mrs. Flemming put the rings on a safety pin. Mrs. Flemming told me that when she put the rings on the safety pin, there was already a ring in this little bag, and she put four rings on the safety pin and pinned it in the bag and pinned it into the pocket of this undershirt.

129 Mrs. Jeffords wore a shirt most of the time, this undershirt most of the time she was ill. The nurses would transfer the bag from one undershirt to the other because these rings were of value to her and she kept them on her person.

I might also say that speaking of jewelry, in October, Mrs. Jeffords gave me a necklace she had been wearing. It was on a chain, it was a diamond lavalier. And one morning when I came over there, it was when Mrs. Rochambeau was still on duty, she said, "Take this off, it is in the way of the flesh in my throat", and I took it off and I said, "Do you want me to put it in the chest", and she said, "Put it on and wear it, it is yours."

And from then on my throat was touched because I wear mostly high-necked clothes, because I wanted to be sure of wearing this, but I didn't mention this diamond lavalier before.

But this diamond bag the nurses transferred from one shirt to the other when she was bathed.

The Sunday or Monday night, I am not exactly sure, I think it was on a Sunday night, Sunday early in the morning, I was there, Mrs. Wilhite was the night nurse, and Mrs. Jeffords had another sinking
130 spell and she was in deep perspiration. After she took care of Mrs. Jeffords and gave her nursing care, she said, "Will you help me change her clothes?"

Q. Was that an unusual event for you to assist in the nursing care?

A. No. No, that is why I stayed sometimes, to help.

Q. All right, go ahead, Mrs. McCord. A. So we got a fresh night-gown and Mrs. Wilhite, in taking off the shirt, just tossed it over to the other bed, and she said, "Mrs. McCord, Mrs. Jeffords may have many of these spells, these deep perspirations, it is no reason for her to wear a shirt any longer, but before you leave will you please take the bag of rings out of the shirt that I have put over on that bed", and I said yes, I would.

Q. Now you have referred to this as a Sunday or a Monday, I think?

A. Yes, sir.

Q. But I am not sure whether you identified what Sunday or Monday that might be. A. Before Mrs. Jeffords died.

It is the week of the 21st, in there, or the 20th, or 21st. I think it
131 was the 21st.

Q. What happened with the rings then? Go ahead. A. So this is early in the morning, I mean two, three, four o'clock, and after everything seemed to be calm and Mrs. Jeffords was resting comfortably, Mrs. Wilhite said, "Why don't you go on home and try to get some rest there and sleep without being disturbed".

I said, "Well, maybe I would."

I had this bag of rings at this time and I put them in my pocketbook and went in to tell Mrs. Souder I was going home, because when Mrs. Jeffords had had this sinking spell, Mrs. Souder came in, too, and I said,

"Mrs. Souder, you know that I have Mrs. Jeffords' rings" -- and I showed them to Mrs. Souder.

I went home and I went to bed to sleep, and early the next morning Lilly May, or Miss Michalka, I don't know which, called me and said that Mrs. Jeffords seemed quite bright.

So I went over there right away to talk with her. At this time, from the time that she had this spell with Mrs. Wilhite the night before she didn't speak any more. I mean that was when she stopped speaking.

Q. Up until that time she had been vocal? A. Yes.

132 Q. Go ahead. A. So, I sat down beside her and I said, "Mrs. Jeffords, I have the bag of rings. I think I know what you want done with them."

And she looked at me, and I said, "Well, if I say this right, blink your eyes."

I said, "I think that you want Dorothy Benson to have the large ring."

THE COURT: Dorothy who?

THE WITNESS: Benson.

BY MR. LASKEY:

Q. Who was she? A. She was a distant relative of Mrs. Jeffords that lived in California.

"And I know you would like Jerome Keith to have the rest of them."

And she blinked her eyes.

The reason I said, "Dorothy Benson" was that Dorothy Benson had wanted Mrs. Jeffords to sell her that ring for a number of years and Mrs. Jeffords was just back and forth, she couldn't make up her mind. I knew she would like her to have it if anything happened.

133 Then later that morning --

THE COURT: And you said, "Jerome Keith"?

THE WITNESS: Yes, sir.

THE COURT: Is that the Jerome Keith who is one of the executors sitting at counsel table?

THE WITNESS: Yes, sir.

THE COURT: All right.

THE WITNESS: Then later that morning Mr. Bird came, and I took the rings to Mr. Bird, and I said, "Mrs. Jeffords is not wearing her shirt anymore and here are the rings that were in the bag" and I gave them to him, and he said, "Well, you just keep them until things are settled." And I opened the bag for Mr. Bird to see them. I really wanted Mr. Bird to take them, but I kept them, I had them. He told me to keep them and I did keep them until I gave them to Mr. Sullivan when they came to my house in January.

BY MR. LASKEY:

Q. Now before returning to that occasion and the conversation and events that transpired then, was there ever an occasion when you had gotten a custom jewelry ring of some kind which had any relation to your relationship with Mrs. Jeffords? A. Yes.

134 Q. What was that? A. As I have said before, Mrs. Jeffords liked jewelry. As I have said that her hands were much thinner and that was the reason she had had the rings put in the bag and was wearing them. Many times she would say or remark how bony her hands were and they didn't look very pretty, she had always had pretty rings.

I went to New York with my husband to a Naval Architect Marines meeting in November. While I was there, I just happened to be looking in shop windows and in this custom jewelry place I went in and bought an imitation diamond ring. It was unlike anything that Mrs. Jeffords had but I thought she would like it because there were three big stones in one ring, and I bought it, and I took it home and gave it to Mrs. Jeffords, and Mrs. Cole knew that it was not real. I mean she was there when I gave her the ring. Mr. Bird, I think, understood that, too.

And she was quite pleased with the ring.

Q. Now, returning to the incident at your house which I believe you said was in January of 1960, when Mr. Bird and Mr. Sullivan came following

135 the telephone call on a day you were having a luncheon and card playing. A. Yes. Mr. Bird and Mr. Sullivan came to my house in the late afternoon, 5:00 or 6:00, around that time, and we sat in the living room. Mr. Sullivan asked me if I had the rings and I said yes, I did. I went to my bedroom and got the rings and brought them back and gave them to Mr. Sullivan, and Mr. Sullivan gave me a receipt for the rings that I had returned to him.

Also, in this envelope with the rings was folded up a bill.

Q. What denomination? A. Twenty dollars.

MR. LASKEY: I am skipping one exhibit number, Your Honor, I had them marked incorrectly.

BY MR. LASKEY:

Q. Showing you what has been marked as Plaintiff's Exhibit Number 4 for identification, I ask you if you recognize that? A. Yes, sir.

Q. Because I am near you now, you have to speak to the last juror, please.

Would you make that response more audibly? A. Yes.

136 Q. What is it? A. There were four rings. Two diamond rings,
one --

THE COURT: The question is what is the receipt.
Is that the receipt Mr. Sullivan gave you?

THE WITNESS: This is the receipt Mr. Sullivan gave to me.

THE COURT: Do you offer it in evidence?

MR. LASKEY: Yes, your Honor.

MR. LEEMAN: I haven't seen it, your Honor.

(Handed to counsel.)

MR. LEEMAN: Also --

THE COURT: No, don't volunteer.

MR. LEEMAN: Excuse me.

THE COURT: Any objection?

MR. LEEMAN: No, your Honor.

THE COURT: You offer it?

MR. LASKEY: I offer it.

THE COURT: It will be received. Read it to the jurors, please.

137

(The document above-referred to,
having been heretofore marked
Plaintiff's Exhibit No. 4, was re-
ceived in evidence.)

MR. LASKEY: "Received from Mrs. McCord, 2928 Garfield Terrace,
Northwest. One 2-diamond ring; one 1-diamond chip, wedding band, one
solitaire diamond ring; one ruby ring with chip; 30-36, in Arabic figures,
cash.

Charles B. Sullivan, Attorney."

Undated.

THE COURT: What was that 30-36?

MR. LASKEY: \$30.36, I assume, although there is no dollar sign on
it.

THE COURT: I couldn't understand you, I asked you.

MR. LASKEY: Yes, 30.36 cash, your Honor.

THE COURT: All right.

BY MR. LASKEY:

Q. Now, Mrs. McCord, was there something you had reference to that you omitted with respect to this? A. Yes.

138 Q. What is that, please? A. This twenty dollar bill was folded up in the bag with the four rings described there.

There was also, I don't know where I got it but I had a small change purse. I don't know whether it also was in the bag or some extra money. There was some change and some extra money and I think that accounts for the odd number.

But the bill that I am referring to was a twenty dollar bill folded into a small square, in the bag with the rings.

Q. Now, was there any other conversation with Mr. Sullivan and Mr. Bird at that time with regard either to the rings, cash or the checks?

A. Yes, after I gave them the rings and had the receipt, we talked just a short time. Mr. Bird had never picked up his picture that had been delivered at my house, so Mr. Sullivan said that he would take it out to his car for him. So I went down in the recreation room and got the picture that Mr. Bird had taken to my house for him, and that was given to him.

Just before I went down to get the picture, I said to Mr. Bird, would Mr. Sullivan like to come down and see the chest and the things there, and Mr. Bird told me, "No, needn't do that at all", in a peculiar way.

139 I didn't press it.

It happened I had made a discovery at that time, that I was interested in letting him know, and I stopped right then.

THE COURT: Before she gets to the discovery, can I find out what this picture is? Is it a photograph or painting?

MR. LASKEY: I was about to ask that, your Honor.

BY MR. LASKEY:

Q. Will you describe the picture which was the subject of your last reference, whether it was a painting, who painted it, what size it was, whether it was framed, where it came from, what you know about it?

A. Mrs. Jeffords -- a painting, oil painting.

THE COURT: An oil painting of Mrs. Jeffords? A. No. This was an oil painting of a large lion, and it was framed in a heavy gold frame, and it always hung in the living room in Mrs. Jeffords' home. She had painted it early in her life.

BY MR. LASKEY:

Q. When she was by another name? A. Yes.

140 Q. Was it a signed painting? A. It had her name upon it. I don't know. I wouldn't say.

Q. In describing this you made a gesture with one arm fully extended and the other arm half extended. Is that the size? A. It was a large picture. As I recall, the picture would be at least that size.

(Indicating)

Q. And had you ever heard anything between Mrs. Jeffords and Mr. Bird about making a gift of that portrait? A. No, I hadn't, but it, I mean, Mr. Bird was welcome to it, I am sure.

Q. What was the discovery you referred to that you had recently made? A. Well, as I say, the cedar chest was in my basement. We grew and enjoyed growing African violets and I had 20 or 25 African violets on top of the cedar chest in front of a low window in the recreation room, and one day I was watering the flowers and I don't know what happened, I dropped the watering can and we had a mess. We had water plus dirt and
141 things like that. So I took everything off and opened the lid to see if any of the water had gotten inside, and there was this dress that we had assumed was made of white Spanish shawls, and I picked it up because some of the little vermiculite had gone down there with some water, and an envelope, there was an envelope there, and when I looked in the envelope, it was full of bills.

Q. Do you know how much money was in the envelope and what the denominations of the bills were or anything of that kind? A. They were all small bills and I think it was \$1100. That is what I recall.

Q. Did you tell Mr. Bird about that at that time, or Mr. Sullivan?
A. No, I didn't.

Q. Why not? A. Well, it seemed to me that since the time that Mr. Bird had found that I was not mentioned in the will, that he didn't seem to trust me any longer. Up until that time we were most confidential.

Q. Had you had a discussion with Mr. Bird at any time about your not being mentioned in the will after Mrs. Jeffords' death, after they had gotten the will out of the safe deposit box? A. Yes. Mr. Bird called --

142 Mrs. Jeffords died on Christmas Day, Christmas Eve, and of course the banks were not open so it was Monday morning before Mr. Bird could go to the box, safe deposit box in the American Security and Trust, and Mr. Bird called me after he had been down there and said, "Mrs. McCord, I am sorry to tell you, you were not mentioned in the will" and I told Mr. Bird then that I knew I was not mentioned in the will; that was the reason for me being given the cedar chest.

THE COURT: Is this a good stopping place?

MR. LASKEY: Yes.

THE COURT: Five minute recess.

(A short recess was taken.)

MR. LASKEY: May I have another exhibit marked?

THE COURT: Yes.

THE CLERK: Plaintiff's Number 5.

(The document above-referred to was marked Plaintiff's Exhibit No. 5 for identification.)

THE COURT: Let's move along as fast as we can.

MR. LASKEY: Yes.

BY MR. LASKEY:

143 Q. Mrs. McCord, in response to one of my questions, you referred to a custom jewelry, and I will ask you if you can identify the ring in that envelope marked Plaintiff's Exhibit for identification Number 5? A. May I open it?

Q. Yes, open it and take the ring out. A. This is the ring I bought in New York, the custom jewelry, and brought back to Mrs. Jeffords in November.

Q. How did you get it back in your possession? A. Mrs. Jeffords had it on her hand when she died and when the undertaker came and took care of Mrs. Jeffords, he brought the ring down to the dining room table where Mr. Bird and I were sitting and put it on the table, and Mr. Bird said, "That is Mrs. McCord's and gave it to me and I took it.

THE COURT: Do you offer it in evidence.

MR. LASKEY: I offer it in evidence.

THE COURT: There being no objection, it will be received.

Walk slowly in front of the jury so they can see it.

MR. LASKEY: Yes, your Honor.

144

(The document above-referred to, heretofore marked Plaintiff's Exhibit No. 5 for identification, was received in evidence.)

MR. LASKEY: It is in an envelope marked Number 5 which has some of Mr. Gray's handwriting on it, and we are not offering that.

THE COURT: I understand.

(Passed in front of jurors.)

BY MR. LASKEY:

Q. I now hand you what has been marked Plaintiff's Exhibit Number 3 for identification and I will ask you to look at the ring in that envelope.

A. It is no ring, it is a pin.

Q. All right, what is it and how do you describe that pin? A. This is a sunburst diamond pin, or it can be worn as a locket.

Q. Tell us, if you will, what transactions were had between you and Mrs. Jeffords with respect to this pin? A. Mrs. Jeffords gave me that pin on my fiftieth birthday.

Q. When was that? A. It was in June, 1958.

145 She said she wanted me to have the pin for my fiftieth anniversary, but any time she wanted to wear it she could have it back to wear. I don't wear much jewelry.

That was agreeable with me.

I mean, we sort of kidded about a Indian gift, but she gave it to me on my fiftieth birthday.

Q. In whose possession was this at the time of Mrs. Jeffords' death?

A. In my possession.

Q. Has there been a claim to your knowledge by the executors to this? A. Yes, sir.

MR. LASKEY: I show it to counsel and offer it in evidence.

THE COURT: What number is that?

MR. LASKEY: Number 3, your Honor.

THE COURT: It will be received.

(The article above-referred to, heretofore marked Plaintiff's Exhibit No. 3 for Identification, was received in evidence.)

146 THE COURT: Walk slowly in front of the jury and show it to them.
(Exhibited.)

BY MR. LASKEY:

Q. Mrs. McCord, is there any other place other than the cedar chest in Mrs. Jeffords' house where valuable items were kept, to your knowledge? A. She kept some jewelry that she changed once in a while, in a bureau drawer.

Q. With respect to stocks and securities of any kind, do you have any knowledge of anything else being kept in the house in other places besides the chest? A. Oh, we kept some records, I mean, down in the buffet in the dining room.

THE COURT: I don't know what is meant by "records", do you?

THE WITNESS: Well --

BY MR. LASKEY:

Q. My question called for securities.

Were there any other securities? A. Excuse me, I misunderstood, Mr. Laskey.

147 Q. All right. A. There were other securities kept in the safe deposit box at the American Security and Trust.

Q. Any securities other than those in the chest kept elsewhere in the house? A. I don't remember.

MR. LASKEY: Your witness, Mr. Leeman.

CROSS EXAMINATION

BY MR. LEEMAN:

Q. Was your last answer, "I don't remember"? A. Yes. I know there were securities in the chest. I know there were securities in the safe deposit box.

BY MR. LASKEY:

Q. I believe you have answered this but if I may put one more question so it will be quite clear.

THE COURT: What was that, Mr. Laskey?

MR. LASKEY: I say I would like to put one more final question.

THE COURT: Certainly.

BY MR. LASKEY:

Q. On the occasion when you turned over to Mr. Bird the items taken from the chest by you jointly and sorted by him in your presence, was it your intention to relinquish any right to any gift that had been made
148 to you by Mrs. Jeffords? A. I had no right to the rings that I gave back to Mr. Sullivan.

Q. I am afraid you didn't understand my question.

I am referring to the items taken from the chest by Mr. Bird on the occasion when you and he, on December 20 or 21, went through the items in the chest in your recreation room, and at that time he took certain items from your house.

At that time was it your intention to surrender any right which you had in those securities? A. No, sir.

Q. Thank you. A. Mr. Jeffords told me that the Court would decide and I assumed --

Q. You said Mr. Jeffords.

THE COURT: Let's get back. You said Mr. Jeffords told you.

THE WITNESS: Mr. Bird told me that the Court would decide and I assumed when the estate was settled, he would let me know whether the securities belonged to me or not.

149 Because Mr. Sullivan had told me, when Mr. Sullivan called me one morning after I had given Mr. Bird and Mr. Sullivan the rings, he called me and asked me if I could come down to his office and help them discuss or try to -- if I knew where some things were, at Mr. Sullivan's office. And I went down to help them.

At that time Mr. Sullivan told me that the stock certificates, the securities would not be mine because they had not been transferred.

Should I discuss anything about that?

Q. No, you have answered that question and if the matter comes up further, you may.

Your witness.

CROSS EXAMINATION

BY MR. LEEMAN:

Q. Mrs. McCord, how well did you know Mr. Bird before this illness that occurred? A. I didn't know Mr. Bird well.

Q. Had you met him before? A. I had met him.

Q. Do you remember the occasions when you met him? A. No, I don't.

150 Q. Do you remember how many times you had met him before?
A. No, I don't.

Q. So that when Mr. Bird came there during her illness, you knew that he had represented Mrs. Jeffords, did you not? A. I called Mr. Bird to come when Mrs. Jeffords was ill. I had known -- Mrs. Jeffords and I had discussed Mr. Bird many times.

Q. So you knew that Mr. Bird had for a long time represented Mrs. Jeffords in many of her affairs? A. I knew that he had represented her in the settlement of her will -- of Mr. Jeffords' estate.

Q. Can you fix the date -- you just testified in reply to counsel on the other side, that you went to Mr. Sullivan's office and had a discussion with him.

Can you fix the date of that? A. It was the 25th, 26th, 24th, in that period, of January, 1960.

Q. In January of 1960? A. Yes, sir.

Q. Now, Mrs. McCord, during all this period when Mrs. Jeffords was sick and Mr. Bird was coming there to the house and you were staying there, what was your relations with Mr. Bird? Friendly? A. Oh, yes.

151 Q. Up until her death, you had no disagreement? A. Up until the time that we were at Mr. Sullivan's office.

Q. That was sometime in January, after Mrs. Jeffords had died?
A. Yes.

Q. Mrs. McCord, you are familiar with Mrs. Jeffords' will, are you not? A. I never saw a copy of Mrs. Jeffords' will until very recently.

Q. And do you recall that most of the legacies in there were either for \$5,000 or \$2,000? A. I only know that my mother received \$2,000.

Q. Well, what did you see when you saw this copy of the will?
A. I just -- I don't even remember. I just saw what it looked like. It wasn't really a will, it was a black photostatic copy. I did not read it carefully.

152 I just knew it said "Laura L. Jeffords" on it. I did not inspect it at all.

Q. You don't know what the size of the various legacies were in that will? A. I do not.

Q. Do you know what the approximate size of Mrs. Jeffords' estate was and is? A. I think Mr. Bird told me that it was in the neighborhood of \$157,000.

Q. And do you know whether or not that figure would include the home? A. I do not know.

Q. You don't know what that represents? A. I do not.

Q. If I told you that outside of the residue of that estate, the largest legacy in that will was \$5,000, and in some cases a piece of jewelry or other incidentals, and you were able to obtain these two \$5,000 bonds and \$1200 and some odd cash and plus these other securities worth some \$7,000, you would be getting nearly four times as much as anybody mentioned in the will, wouldn't you?

MR. LASKEY: I object to the question.

153 THE COURT: I sustain the objection.

BY MR. LEEMAN:

Q. Now, when this cedar chest was taken to your home, was anything else taken to your home at that time with you? A. Yes, sir. A table. An antique, drop-leaf table.

Q. You didn't mention that in your direct testimony. A. No, I forgot it. It slipped my mind.

Q. Now, did you know that this sunburst diamond pin was bequeathed in that will? A. I did not know it until sometime after Mrs. Jeffords died, and I was told that the pin was willed to Mrs. Kitsmiller -- that is not her name now -- Croxton, and at that time were were into a legal situation and I told Mr. Gray that I didn't wear the pin anyway, I had known Mrs. Croxton all my life also, and I would be very happy to give the pin to Mrs. Croxton. He said that that was not allowable at this time.

Q. Well, you don't claim title to the sunburst diamond pin? A. It was given to me, but if it was left to Mrs. Croxton in the will, she certainly may have it, and Mrs. Flemming told me it was, and I believe Mrs. Flemming knows.

154 Q. Now, Mrs. McCord, you reviewed that Mrs. Jeffords had taken you on trips? A. Yes, sir.

Q. That you had lived at her home? A. Yes, sir.

Q. Now, do you know anybody else that she took on trips, and gave presents to? A. I am sure there are people that she has given gifts to. I am sure she has taken people on trips. I am sure people have taken her on trips. I know that they have.

Q. So it wasn't anything unusual about your case? It wasn't a special case? A. Well, at the age that I was and what I had to see but and what she was doing for me, I thought it was very special, because other people that she had taken, I know that she had been taken by other people and Mrs. Jeffords' expenses were minimal.

Q. Did you ever know Mr. Jerome Keith's sister? A. Dorothy?

Q. Yes. A. I may have met Dorothy years ago. Mrs. Keith --

155 Dorothy -- and Mrs. Jeffords I know went to South America together.

Q. Did they take any other trips together? A. I don't know.

Q. Now, Mrs. McCord, with respect to some furniture that Mrs. Jeffords had given to you or sold to you, did you have a bill of sale for that? A. Yes, I have.

Q. And do you have that with you today in Court? A. I think Mr. Laskey has it.

MR. LASKEY: We have it here somewhere.

Here are two, Mr. Leeman. I will be glad to hand them to you, sir.

MR. LEEMAN: Are they both for the same thing?

MR. LASKEY: They appear to be.

MR. LEEMAN: May I have these marked Defendant's Exhibits 1 and 2, your Honor?

THE COURT: Yes.

(The documents above-referred to were marked Defendant's Exhibits Nos. 1 and 2 for identification.)

BY MR. LEEMAN:

156 Q. I show you, Mrs. McCord, what has been marked Defendant's Exhibits 1 and 2, and will you tell the jury what they are? A. This says, "Agreement between Estelle" --

THE COURT: I don't think she ought to read it.

What is it?

THE WITNESS: It is an agreement between Mrs. Jeffords and myself for services for the furniture, that I receive the furniture for the services I performed with her.

BY MR. LEEMAN:

Q. And are they both the same? A. Yes. I have not read them all, but they have to be the same. I think one is a carbon copy.

THE COURT: I see.

They are signed? Are they signed?

THE WITNESS: Both are signed by Mrs. Jeffords and myself. They are notarized and they are witnesses.

THE COURT: All right, I just asked you if they were signed.

THE WITNESS: Yes, sir.

THE COURT: You identified them by the signatures?

THE WITNESS: Yes, sir.

157 THE COURT: Very well.

BY MR. LEEMAN:

Q. And the date on this? A. The 6th of August, 1957.

MR. LEEMAN: And may I read this to the jury, your Honor?

MR. LASKEY: Are you offering them in evidence?

MR. LEEMAN: No. Never mind.

THE COURT: Return them to the Clerk. They have been marked for identification, and they have been identified.

MR. LEEMAN: I was just going to ask a couple questions about them, your Honor.

THE COURT: All right. I didn't want them to get away from the Clerk because he has the responsibility for these exhibits.

BY MR. LEEMAN:

Q. Now, Mrs. McCord, at the time that Mrs. Jeffords gave you or sold you this furniture in 1957, you had this written agreement with her, did you not? A. Yes, sir.

Q. Now, have you had any other written agreements for transfer of the property? A. No, sir.

158 Q. And this is the only one in which there was a written agreement?

A. There was a reason for that.

Q. Now, Mrs. McCord, at the time that Mrs. Jeffords was taken sick in October, she was 89 years of age, is that correct? A. Yes, sir.

Q. And did you know that it was a stroke that she had suffered?

A. No, I did not. It was not so said in the beginning.

Q. Well, did it ever come a time when you found out she had suffered a stroke? A. Yes, sir.

Q. And one of her sides was useless, was it not, as a result of this stroke? A. It was partially paralyzed. With therapy she did regain the use, I mean she could lift her arms, she could squeeze balls, and she even

tried writing her name and practiced writing her name.

Q. Now, it was during this period that you had your chief discussion about the cedar chest, is that correct? A. No, I wouldn't say it was chief.

The chest had been discussed for a number of years but Mrs.

Jeffords just referred to it again, "Why don't you take the chest; I am ill".

159 I did not take it but she told me to.

Q. Now will you tell us as best you can, what your conversation with Mr. Bird was at the time that this chest was removed from Mr. Jeffords' house? A. I think I talked to Mr. Bird on Friday about moving the chest to my house. I told him that Mrs. Jeffords had given me the chest some time ago, had asked me to move it, that I had not, and that the day before she definitely said, "Get it out of here, Estelle. If I die, you won't be able to."

And Mr. Bird said, "Very well, make arrangements and take it. She gave it to you."

Q. And is it your testimony that the only reason that chest was removed was because it had been given to you? A. Yes, sir.

Q. Was there any discussion about that there might be valuables in that chest? A. No, sir.

Q. Or that it would be safer at your place? A. None whatsoever.

160 Q. No discussion at that time? A. No, sir.

MR. LASKEY: Wait for Mr. Leeman to finish his question, Mrs. McCord. It will help the reporter and everybody else.

THE WITNESS: Excuse me.

BY MR. LEEMAN:

Q. So this was on Friday evening? A. I don't know if it was Friday evening or Friday morning but sometime during Friday I discussed this with Mr. Bird.

Q. Well, that was a pretty important occasion for you, wasn't it? A. Why?

Q. You knew that there were valuables in that cedar chest. A. I knew that there were stock certificates in that chest, I knew that there was old silver in that chest. I knew that there were lots of little odds and

ends of sentimental value that were for me.

Q. And your testimony is that the only reason you requested the removal of that chest was because it had been given to you by Mrs. Jeffords?

161 A. Yes, sir.

Q. Now, you say you had discussed this chest many times with Mrs. Jeffords? A. Yes, sir.

Q. Well, did it ever occur to you to have a written agreement such as you had with the furniture? A. No, it did not. There was a reason why we had a written agreement for the furniture.

Q. Well, the reason was so there would be a record of it, wasn't it? A. No, sir. Someone else wanted to buy the furniture from Mrs. Jeffords. She had always told me that she would like me to use the furniture, to have it. When I lived at 3286 Chestnut Street, there was no place to put it. When we moved to Garfield Terrace, there was room. That is when I took it. But Mrs. Jeffords said that we would have an agreement and she could honestly say that she had already disposed of the furniture to the other party that was interested in buying it from her.

Q. So the reason was -- A. That is the reason we had the bill of sale.

I never moved the furniture all this time. The furniture was moved when Mrs. Jeffords was ill also. The furniture stayed right in Mrs.
162 Jeffords' home. She had ribbons tied around it so no one could sit on it, so it would stay in fair condition.

But someone else wanted to buy the furniture. She had always said she wanted me to have it. She said, "We will have an agreement and I can honestly say that the furniture had already been promised and we have a business agreement" and this was drawn up for that purpose.

Q. So, what you are saying is, in effect, that you had a written agreement so anybody interested in the matter would know that there was a record of it?

MR. LASKEY: I object to the form of the question if the Court please.

THE COURT: Overruled.

BY MR. LEEMAN:

Q. Is that correct? A. I don't think so.

Q. Well, it did serve as a record, did it not? A. Accidentally, I mean, it did serve as a record.

Q. Now, Mrs. McCord, your counsel has offered in evidence, which has been marked Plaintiff's Exhibit 1, a check for \$25.00, signed by you and payable to Laura L. Jeffords? A. Yes, sir.

163 Q. Now, your testimony was that this is in payment for the two \$5,000 bonds which have been offered into evidence? A. Yes, sir.

Q. Now, there is no record of that on this check, is there? A. No, there isn't.

Q. This is simply a check for \$25.00. A. Well, that is the way my checkbook is. There is no place there to write what it is for.

Q. Well, people frequently put on the check a note as to what it is for, don't they? You have yourself, haven't you? A. I may have. The checks that I have now have a place what they are for, and I agree it is much easier to know what your check is for that way.

Q. Well, this was a pretty important transaction, wasn't it, when \$10,000 was being transferred to you? A. Mr. Leeman, I think that I --

Q. Answer yes or no. Was that an important transaction?

164 MR. LASKEY: If the Court please, I think the witness can answer and make whatever explanation is necessary.

THE COURT: I sustain the objection.

THE WITNESS: Does that mean that I explain?

THE COURT: You may answer. Just answer responsively.

THE WITNESS: As you recall, I took the bonds under protest from Mrs. Jeffords, and at this time we had been discussing these bonds ever since spring, early summer. And in September she insisted that we do this, and this is what she had decided to do and I did what she asked me to do. I was accustomed to doing what Mrs. Jeffords asked me to do.

BY MR. LEEMAN:

Q. Well, you wrote the check? A. Yes, I did.

Q. And you knew what you were writing it for? A. I certainly did.

Q. And when you were getting two negotiable \$5,000 bonds, wasn't it important that you say what this check was for? A. Mr. Leeman, it did not occur to me to identify such a check. I was not in the habit of writing Mrs. Jeffords checks.

165 Q. Are there any other witnesses as to what this check was given for? A. No.

Q. So that we have to rely on your testimony of the \$25.00 check you wrote was in payment for two \$5,000 Government Bonds? A. I said that when I put my hand on the Bible, Mr. Leeman.

Q. Now, you were almost daily, except when you were away, at Mrs. Jeffords' home? A. Yes, sir.

Q. And according to your testimony at times she was fully capable of understanding what she was doing? A. Yes, sir.

Q. And at no time during that period did you ever discuss a written statement of the gift of that chest and the contents of it? A. No, sir.

Q. And during all of that period you didn't think it was important to make a list of what was in that chest? A. I did not.

166 Q. Now, at the time that Mr. Bird came to your house to inspect that cedar chest, your relations with Mr. Bird were perfectly friendly? A. Yes, sir.

Q. You had confidence in each other, is that correct? A. I think so.

Q. So, at that time, you took the things out of the cedar chest and exhibited them to Mr. Bird? A. I handed them to Mr. Bird. Mr. Bird took them from me, or from the table.

Q. And Mr. Bird let you know that his purpose was to take valuables and things that would be necessary in the handling of the estate, out of that chest for safe keeping? A. There was never any mention of safe keeping, but he said he needed to record these things.

Q. Now, Mrs. McCord, this chest was brought to your house on a Saturday, before Mrs. Jeffords died? A. Yes, sir.

Q. And it was brought there by your husband and was it your son-in-law? A. Yes, sir.

Q. Now between that time and Monday morning, did you have any discussion with your husband about the contents of this chest? A. No, sir.

167 Q. Did you look in the chest at any time between Saturday and Monday morning? A. We did not look in the chest. We needed some more nightgowns and I went over and got two nightgowns and brought them back to 2707 Woodley Road.

Q. And when was that? A. I would say that was early Sunday morning.

Q. So, early Sunday morning, you had the chest open? A. Yes.

Q. And took some nightgowns out of it? A. Yes. They were right on the top shelf.

Q. Well, was your husband at home Saturday night? A. Yes.

Q. And Sunday? A. Yes.

Q. And you knew when you took that chest that there were securities and valuables in that chest? A. Yes, sir.

Q. And did you and your husband discuss any of that? A. No, sir.

Q. During that period? A. No, sir.

168 Q. Have you bought any stocks, Mrs. McCord? A. No, sir.

Q. You don't own any stocks? A. Yes, my husband and I own stock.

Q. In fact, you and your husband transact a great deal of business jointly, do you not? A. Yes. Most everything we have is joint.

Q. So it was during this period or at the time that Mrs. Jeffords was taken sick that you and your husband were buying a new house?

A. We had bought the house before Mrs. Jeffords became ill.

Q. It was in that period? A. It was before Mrs. Jeffords had become ill that we had purchased a new house. We had not had settlement but we had purchased the house, yes.

Q. And you had to go to the title company during that period?

A. Yes, sir.

Q. And you had some difficulty with it, did you not? A. Not that I recall.

Q. Well, your home that you had at that time, was that a part of the transaction when you bought the new home? A. Our house on Chest-
169 nut Street was just about paid for and the money that we received for the selling of the house on Chestnut Street we used to pay on the house on Garfield Terrace.

Q. Now, Garfield Terrace was very close to Mrs. Jeffords' home?
A. Yes, sir. She was very happy. She loved the house.

Q. And you had endeavored to persuade Mrs. Jeffords to come and live with you? A. No, I never asked her to come and live with me. When she was ill, I said I would be glad to have her come and stay with me.

Q. But she wanted to remain in her own home? A. Yes.

Q. Mrs. McCord, do you recall when you filed this suit, the date of it or the approximate date? A. I discussed it with Mr. -- I went to see Mr. Gray shortly after my visit with Mr. Sullivan and Mr. Bird. The exact time of filing the suit I do not know exactly but I am sure Mr. Laskey could tell you.

MR. LASKEY: The Court record will show that, your Honor.

170 THE COURT: Oh yes.

Do you want to see the record and get the date from the file?

MR. LASKEY: Oh no, I am just saying the Court record will show that.

THE COURT: You don't need to tell me that, I know it does. I asked Mr. Leeman if he wanted to see it to get that.

MR. LASKEY: I thought you were addressing me, your Honor.

THE COURT: No, no I was not.

MR. LEEMAN: Yes, your Honor, I would like to know the date that the suit was filed.

THE COURT: Shall I tell you now?

MR. LEEMAN: Yes.

THE COURT: June 9, 1960.

BY MR. LEEMAN:

Q. Now, prior to June 9, 1960, when this suit was filed, did you ever tell the executors that you had found this \$1200 and some odd dollars in that cedar chest? A. No, sir, I had not. I have told my lawyer.

171 Q. You have testified that you had been in this cedar chest taking out securities, helping Mrs. Jeffords with her income tax and so forth, and you have testified that you had some idea of what the securities and stocks were in that chest. Is that right? A. Yes, sir.

Q. Now, when you filed this suit --

THE COURT: Do you want the file? Pass it to him, Mr. Clerk.

MR. LEEMAN: I want to look at the original.

THE COURT: It is in there.

The complaint is the first paper after the pretrial statement.

MR. LEEMAN: I have it now, Your Honor.

Thank you.

I will show the plaintiff the record in this case and the complaint that was filed by her, and I will ask you if that is your signature, Mrs. McCord? A. Yes, sir.

Q. And at the time you signed it, you swore to it before a notary public? A. Yes, I did.

172 Q. Now, paragraph 4 of this complaint reads,

"On or prior to December 17, 1959, Laura L. Jeffords made a gift and delivered to the plaintiff a cedar chest and its contents. Prior to the death of Laura L. Jeffords on December 25, 1959, the plaintiff accepted said gift and removed the chest and its contents to her home. Among the contents of said chest were certain stocks and bonds valued in excess of \$3,000 and which said decedent intended to and did include in the aforementioned gift to the plaintiff."

A. That was my belief.

Q. That was your statement in that sworn complaint? A. Yes, sir.

Q. And in that complaint you did not mention the name of any single stock or security? A. I had nothing to do with drawing up the will -- the complaint. I am sure if it had been necessary to specify it,

we could have had names of stock certificates.

Q. Well, you have testified that you didn't know how many shares of stock there were and you weren't sure of just what securities were in that cedar chest? A. Sir, I did say that I did not know the number of shares
173 on each stock certificate. I also said that I did not recall the names of all of the stocks. This was something that I had to absolutely know for certain and I could not.

Some things I recalled that I could be absolutely sure of the names of some stocks. All of them I could not, or the amount.

Q. Mrs. McCord, these two \$5,000 Government Bonds which you had, I believe you testified that your understanding or conversation with Mrs. Jeffords at the time was that you would have those in case she needed money on account of her illness, and that if she didn't need it, at her death, the bonds would be yours? A. Yes, sir.

THE COURT: Is that correct?

THE WITNESS: Yes, sir.

BY MR. LEEMAN:

Q. But during her lifetime, she was to have the income from the coupons that were clipped off? A. Yes, sir.

Q. Now, when were they given to you? A. I actually took the bonds in September.

174 Q. And when you took the, where did you take them? A. To my house. I lived down on Chestnut Street.

Q. And where did you put them? A. In the bookcase.

Q. Now, at that time did you and your husband have a joint safe deposit box at the National Savings and Trust Company? A. Yes, sir.

Q. And did you have some of your own securities in that safe deposit box? A. Yes, sir.

Q. Now, what was your reason for putting these in the bookcase? A. Just because, when we would put them in Mrs. Jeffords' account, the plan was at that time I would bring the bonds to her house, they would be clipped at her house; Mrs. Jeffords and I would go to the bank and deposit them or she would have them cashed for her own use.

Q. Then did there come a time when you moved to your new home? A. Yes, sir.

Q. And I believe you testified that you brought the bonds back to Mrs. Jeffords' house and put them in the bottom bureau drawer? A.

175 Yes, she asked me where they were and she thought they would be safer, inasmuch as I was not there to supervise the moving, to have them in her house during this period. So I brought them and put them in her bottom drawer, bureau drawer.

Q. Well, you never suggested to her that they would be safer in a safe deposit box, did you? A. No, I didn't.

Q. Now, at that time, you knew that Mr. Bird had a power of attorney to attend to Mrs. Jeffords' financial affairs, did you not? A. Yes, he had a power of attorney at the American Security and Trust Company account.

Q. And you knew that Mrs. Jeffords had a sufficient estate to take care of any necessary payments for nurses or medical bills? A. That is correct.

Q. So there was really no need for you to have these two bonds to cover expenses? A. But that is what I told Mrs. Jeffords in the beginning.

Mrs. Jeffords insisted that I take this. It made her feel better.

176 I am sure she knew that it didn't make any difference what the situation might be, that she would not be imposing on anybody, but she was going to be well taken care of. She wanted me to take care of it, if it was necessary. She wanted me to have these bonds.

Q. Where did she have these bonds when you first got them?

A. The day we first were approached with it, they were on the dining room table in her living room. She was at home, I went in, and that was when she talked with me about the two bonds.

Q. And when was that? A. I said that was in the late spring, early summer. It was after she had had her examination at Groover, Christie and Merritt.

Q. And Mrs. Jeffords was 89 years old at that time, wasn't she?

A. Yes, she was.

Q. So, at that time, you took the bonds home? A. No, I did not. I did not take all the bonds home, Mr. Leeman, until September, the first part of September. I did not.

177 Q. You saw them on the table? A. Yes, sir.

Q. What happened to them after that?

Where did she put them? A. I don't know.

Q. How long were you at her home that day? A. As I recall -- well, I don't know exactly. It could have been one hour, could have been a half hour, could have been three hours.

Q. Was it in the daytime or -- A. Yes, it was in the daytime.

Q. Who else was in the home at that time? A. I could not tell you. Ellie was there.

Q. Well, when you left, did Mrs. Jeffords leave the room with you? A. She probably went to the front door with me, yes.

Q. And as far as you know, she left the bonds on the dining room table? A. I don't know where she left them.

Q. Well, you were there. A. I mean I don't -- I know they were on the dining room table when we were talking. I assume they were

on the dining room table when she went -- if she went to the front door
178 with me. I could have easily have said good-bye to Mrs. Jeffords
right in the dining room.

Q. Were there any other securities on the dining room table?

A. Not that I recall.

Q. She was sitting in the dining room with two bonds? A. The
table, we often sat around the dining room table to talk. That was where
everything was done. I mean, I worked there and everything else. But
when Mrs. Jeffords was talking to me, there was a runner on the table,
there was a bowl in the center of the table, and she just lifted up the
runner and showed me these bonds and told me she wanted me to keep
the, that she wanted me to have them to use if it was necessary for her
care; if it wasn't, they were mine. And I said we didn't have to make
any arrangement like that; that I would take care of her without any kind
of an agreement.

Q. How did you happen to go to Mrs. Jeffords' house on that day?

A. Mrs. Jeffords -- that was close to the time that Mrs. Jeffords had
179 been to Groover, Christie and Merrit, and she asked me to come
down. She called me that morning. I had been there two or three days
that week, and she called me and asked me to come.

Mrs. Jeffords would call me any time she wanted to and if she
wanted something done, she would ask me to come and I went.

THE COURT: We'll recess now for lunch.

(Lunch recess.)

180

AFTERNOON SESSION

(1:45 p.m.)

MR. LASKEY: May counsel approach, Your Honor?

(AT THE BENCH:)

MR. LASKEY: The securities which were turned over or which
the plaintiff contends were turned over to Mr. Bird were the subject
of an injunction order against disposition of them. I asked them last
night if they could produce the actual service day so that I could show

them to the witness, thinking it might help refresh her recollection in identifying them. They advised me that they were not able to do that. I asked them to tell me this morning, and they said this morning it would take two weeks to get them.

That seems unreasonable.

THE COURT: Where are they?

MR. LEEMAN: They had an order of the Court to sell these securities when this injunction was issued and they had been transferred to Hemphill Noyes, a stock firm. This injunction was issued and they have been holding them ever since.

He asked me about them yesterday. Mr. Bird talked to the Hemphill Noyes office here in Washington and they said what they would have to do would be have the transferees transfer them back to the
181 executors and that would take this time for us to get them.

THE COURT: Let me tell you, I am not going to waste a lot of time on that. This was an injunction against the disposition of those securities and it will have to be obeyed and obeyed promptly.

MR. LEEMAN: They have been held just the way they were right at the time the injunction was issued.

THE COURT: Then send them back that way. I don't understand this transfer act.

MR. LEEMAN: Well, we can ask them to produce them here.

You see, they have a New York office up there and from what I can understand, they are in New York and we will have to get them back here.

THE COURT: Let me see the injunctive order.

This orders that the defendants Bird and Keith are restrained and joined from disposing of or transferring or causing to be disposed of or transferred the following securities.

Now, at that time were these securities in the hands of Bird and Keith?

182 MR. LEEMAN: The other counsel had done that, you see.

THE COURT: Had done what?

MR. LEEMAN: They had put them --

MR. BIRD: May I say something, sir?

THE COURT: No, wait a minute. I asked a question and would like an answer.

MR. LEEMAN: Prior to the issue of that injunction, we had obtained an order of the probate court to sell these securities. When I say we, I was not in it, but I mean other counsel.

THE COURT: All right.

MR. LEEMAN: So that the way you dispose of these registered securities, you endorse them on the back to the stockbroker and then he can dispose of them. That had been done before that injunction was issued and so they are in that situation with Hemphill-Noyes.

Yesterday Mr. Laskey asked me for them verbally and we went to Hemphill-Noyes and the information we have now is that they will have to be transferred back to the executors, and that would, they say -- it is a transfer act, it is different stocks, you see.

183 THE COURT: Oh, they have been sold?

MR. LEEMAN: Oh no.

THE COURT: Well, have them sent back in the exact condition they are now.

MR. LEEMAN: Well you see, at the present time they have been assigned to this stockbroker for the executors, and from what I understand, they are in New York.

THE COURT: Well, we will get Hemphill-Noyes down here. They can send them back over night, in whatever condition they are in.

MR. LEEMAN: I would think so.

THE COURT: I would, too.

MR. LEEMAN: I mean I am perfectly willing to cooperate.

Now they gave us a statement of each one of them as of yesterday and I can produce that.

MR. LASKEY: I don't want a statement. I want the certificates.

MR. LEEMAN: The certificate of Hemphill-Noyes as to exactly what the situation is.

THE COURT: I direct you now to inform Hemphill-Noyes that you are under obligation to produce those securities, and you call on them to produce them for you. If they don't do it, the Court will take

184 appropriate action.

MR. LEEMAN: I will do that.

THE COURT: I am not going to spend time on that kind of a thing.

MR. LEEMAN: You understand, though, they have never made this request before. It was just verbally yesterday. If they had timely made the request, they would have been here.

THE COURT: It seems to me you would have had them here for this trial.

MR. BIRD: That is like a Government Bond.

THE COURT: What is that?

MR. LEEMAN: There was a \$1,000 Government Bond which was given to the Treasury for a thousand dollars of agreement with Mr. -- it was worth only about \$800 -- by agreement with Mr. Gray and Mr. Sullivan. They put that in the savings account, the cash proceeds of that.

THE COURT: Is that correct?

MR. LASKEY: Is that right, Mr. Gray?

THE COURT: Is that correct?

MR. GRAY: I understood the proceeds of the bond had been redeemed and the proceeds were covered by this injunctive order, just the proceeds.

185 THE COURT: So there is no problem about that?

MR. BIRD: It was only about \$800.

That thing was agreed to by Mr. Sullivan and Mr. Gray.

MR. LASKEY: There is no issue but that.

THE COURT: No issue but that?

MR. BIRD: And the stocks are in the same condition they were at that time.

THE COURT: I would assume so. I would tell Hemphill-Noyes to have them here Thursday morning. I can't sit tomorrow, as I have already told you.

MR. LEEMAN: I understand. I will convey that message to them and endeavor to get them here.

THE COURT: They had better get them here.

Resume the stand, madam.

CROSS EXAMINATION (Resumed)

BY MR. LEEMAN:

Q. Mrs. McCord, when the representative of the bank was there to execute this power of attorney to Mr. Bird, were you present? A. I was downstairs.

Q. Did you hear any of the conversation? A. No, I didn't.

186 Q. Do you know that the representative from the bank came there?

A. Yes, I was there when she came.

Q. Did you see the power of attorney? A. I did not.

Q. Have you ever seen it? A. No, sir.

Q. Now, Mrs. McCord, this \$1100 that you later found wrapped in a shawl or a dress -- A. It was in a dress in an envelope.

Q. What size was that envelope? A. Legal size envelope.

Q. A legal size envelope? A. Yes.

Q. And what denominations were the money in? A. They were all small bills. I want to say \$1.00 but I cannot be exact.

Q. Do you recall that you testified under oath when your deposition was taken that they were in one dollar bills? A. I may have.

MR. LASKEY: Do you have a reference to the paper?

187 MR. LEEMAN: Page 50.

BY MR. LEEMAN:

Q. Mrs. McCord, I will read this to you and ask you if this is correct as to the way you testified when your deposition was taken:

"Q. Other than the box of silver, what else was in the cedar chest?

"A. There were lots of things. There were sheets and pillow cases, there were table cloths, there were gloves, there were some pocketbooks, marriage certificate. There were lots of Mrs. Jeffords' business, and there also was an envelope in there with some money in it.

"Q. Now how much money?

"A. Well, on the outside of the envelope it said "1,000," but when it was counted it was about \$1100. Mrs. Jeffords had counted it wrong.

"Q. \$1100?

"A. Yes, sir.

"Q. Would you tell me what denominations these bills were in, if you know?

"A. Yes. I think they are still as they are. They were one dollar bills."

188 Did you so testify? A. I must have, and they were still -- I mean we can find out because they are still in the same envelope that they were found in.

THE COURT: Where are they now?

MR. LEEMAN: In the custody of the Court.

THE COURT: All right.

BY MR. LEEMAN:

Q. These bills are in the same -- they are the same bills that were found? A. The same envelope, they are the same counting of Mrs. Jeffords on the back of the envelope.

Q. Now, there was other money in the cedar chest? A. That is the one that I talked about this morning. There was some \$10.00 here and \$5.00 there, and when it was all put together, it was \$120.00.

Q. Exactly \$120.00? A. That is what I recall. I am recalling now.

MR. LEEMAN: Mr. Clerk, do you have that envelope here?

THE COURT: Is that in the registry of the Court, Mr. Clerk, do you know?

189 THE CLERK: It is, Your Honor. It was not turned over to me because there was no request made for it.

THE COURT: It is still in the registry. It was not turned over to the clerk because no request was made of him for it.

Tell him, Mr. Clerk.

THE CLERK: There was no request made to withdraw the money in question from the registry so therefore, it was not turned over to me.

MR. LEE MAN: That is all, Your Honor.

REDIRECT EXAMINATION

BY MR. LASKEY:

Q. Mrs. McCord, you had reference to response to one of Mr. Leeman's questions, to a shelf in a chest.

Would you describe it briefly? A. The cedar chest had a tray in the top.

Q. How deep was it? A. Oh, a couple of inches.

Q. Where in the chest were the securities when they were taken out and given to Mr. Bird, what part of the chest? A. In the bottom of the chest.

Q. Above or beneath -- A. Below the tray. The tray was on top.

190 Q. You also were asked with respect to a discussion with your husband between the Saturday morning when the chest was taken from the house and the Monday afternoon, I believe, it was when you and Mr. Bird went through the contents of the chest.

How frequently did you see your husband during that interval of time? A. I believe I saw my husband a very short time Sunday night. I came home supposedly to get some rest, to go to bed and was called back to Mrs. Jeffords early in the morning. So we didn't discuss anything.

Q. Did you following that, following the turning over of the securities and other papers to Mr. Bird on that Monday afternoon, did you

have a discussion with your husband -- just yes or no, please. A. Yes.

Q. As a result of that, did you make any request of Mr. Bird?

A. No.

Q. With regard to the list of securities or something of that nature? A. I don't recall that I asked Mr. Bird for a list.

191 Q. Now, there came a time you testified in response to Mr. Lee-
man's question that there was a meeting at Mr. Sullivan's office. Is
that correct? A. Yes, sir.

Q. Prior to that time, had you consulted counsel in any way with
respect to -- your own counsel in any way with respect to your interest,
if any, in items which had formerly belonged to Mrs. Jeffords? A. I
had not.

Q. What occurred at the meeting at Mr. Sullivan's office? A.
Mr. Sullivan was asking me of various things that Mrs. Jeffords had
had. Jewelry --

Q. Let me stop you for a moment. Who was present and when
was this? A. This was just before I went to see Mr. Gray, so it was
the last week in January.

Q. Now, who was present? A. Mr. Bird, Mr. Sullivan and
Mr. Keith, and myself.

Q. Now, what happened at that meeting? A. Well, I was asked
several questions about what did I know where things were, and we dis-
192 cussed them. I told them everything I knew, and what I didn't
know I said I didn't know. Then there came a discussion as to where
was the other ring that had been in this bag that I had returned to Mr.
Sullivan and Mr. Bird, and I said I knew of no other ring, that there
were four rings when I had gotten it, and that was exactly what I returned.

And Mr. Bird asked me where the ring was that was the real one
of the one that I had brought from New York, and I said that I never
knew that Mrs. Jeffords had a ring that looked like that; I knew nothing
about it.

Q. Is that the fact that you never knew of Mrs. Jeffords having

such a ring or one that looked like it? A. I never saw Mrs. Jeffords with a ring of that description at any time in my life.

Q. What else was said? A. I told Mr. Sullivan that I did not know anything about it, and Mr. Bird said that it was in the bag when I showed him the rings at Mrs. Jeffords' that morning, and I said that they were not and I thought that our meeting should come to a termination. I was surprised. I didn't like the situation at all, and I left.

193 Q. Was the discussion on a friendly basis or on an accusatory basis? A. We started out friendly but I would call it accusatory before I left.

Q. What was your emotional reaction to that meeting? A. I was very definitely emotionally upset. That was one of the reasons I wanted to leave. And I called my husband, met my husband -- had my husband stand out in front of his office, and I met him and I told him what had happened, and he told me that I shouldn't worry about this, that I knew what was there, and they certainly would find that there was no other ring, and not to worry about it.

That was that day.

The next night when my husband came home from the office -- and of course this did bother me, I had never been accused in this manner before, and Mr. McCord said that he thought maybe it would be wise to see -- to have legal assistance there, that I should not have to be put in this situation.

And he made an appointment with Mr. Gray and I went to see Mr. Gray to tell him what had happened the next day.

194 Q. And following that the suit was prepared and filed? A. After the discussion with Mr. Gray, we went through everything, a suit was filed.

Q. While you were in Mr. Sullivan's office, was there any discussion about securities? A. No, sir.

Q. Do you feel, Mrs. McCord, that if you had an opportunity to examine the certificates which are under the injunctive order of this

Court, that it would aid you in identifying securities which you saw on the occasion that the contents of the chest were being sorted? A. I would think so, yes.

MR. LASKEY: That is all I have, Your Honor.

THE COURT: Any re-cross, Mr. Leeman?

MR. LEEMAN: Just one or two questions, if Your Honor please.

RECROSS EXAMINATION

BY MR. LEEMAN:

Q. Now, Mrs. McCord, you said when you were at Mr. Sullivan's office, you gave him all the information that you had. Is that right?

195 A. No, they were asking me -- Mr. Sullivan called me and asked me if I would come down and help them sort out where this might be or if I knew about this, and I said yes I would be glad to come.

Q. Now, at that time you knew about these new bonds? A. Yes.

Q. You didn't tell Mr. Sullivan anything about them, did you?

A. I never had an opportunity. We got around to this situation in a pretty fast time.

Q. And you didn't tell him anything about the \$1100 that was in the chest? A. I beg your pardon, I don't mean what I just said. I anticipated something that you didn't ask me.

I did not tell him anything about the bonds. They had never been in the cedar chest. I had planned to show Mr. Bird and Mr. Sullivan the money when they came to my house to get the rings, and I was told to don't bother about the cedar chest now.

That was the first time I was sort of being cut off.

196 Then when they called me to the office, I was going to tell them about that money that day, but the discussion, they started asking me questions, I was only answering questions. By the time we were into another ring that I knew nothing about and Mr. Bird said he had seen in the bag and that I knew nothing about, I had become upset and there was no reason to tell anything and the best thing I could do was to leave and I did, I excused myself, I believe.

Q. But when you went to see Mr. Gray, did you tell him about these two United States \$5,000 bonds? A. I didn't tell him the first time I saw him. I don't remember what I told Mr. Bird.

Q. Did you tell him anything about the \$1100? A. I think I told Mr. Gray about that.

Q. In January? A. Yes, sir.

Q. But you are positive you didn't tell him anything about the two \$5,000 bonds? A. I am not positive, no, sir.

MR. LEEMAN: That is all.

THE COURT: Any further examination?

MR. LASKEY: No, Your Honor.

197 THE COURT: Mrs. McCord, what is Mrs. Souder's occupation?

THE WITNESS: Mrs. Souder has no occupation, to my knowledge.

THE COURT: Didn't you mention her in your direct examination as being in the house?

THE WITNESS: She was a roomer in Mrs. Jeffords' house.

THE COURT: She was a roomer in the house?

THE WITNESS: Yes, sir.

THE COURT: Now, directing your attention to this sunburst --

THE WITNESS: Yes, sir.

THE COURT: That was given to you, as I understood your testimony, on your fiftieth birthday?

THE WITNESS: Yes, sir.

THE COURT: As a gift?

THE WITNESS: Yes, sir.

THE COURT: What year was that?

THE WITNESS: 1958.

THE COURT: Do you know the date of Mrs. Jeffords' will?

THE WITNESS: No, I don't.

198 THE COURT: Do you know if it was before 1958 or after?

THE WITNESS: I don't know. I would think it was before.

THE COURT: Well, if it was before, why were you willing to give

the sunburst to Mrs. Croxton, upon hearing that it was in the will?

THE WITNESS: Well, Mrs. Croxton, I have known all my life also, and Mrs. Flemming, who was a mutual friend of Mrs. Croxton and Mrs. Jeffords, told me that Mrs. Croxton always wanted that pin.

I said that as far as I was concerned, she could have the pin. I did not know it had been willed to Mrs. Croxton.

THE COURT: Were there diamonds in that sunburst, or whatever is in that sunburst, diamonds or glass?

THE WITNESS: They were diamonds.

THE COURT: Diamonds?

THE WITNESS: They were diamonds. I don't think they were perfect. I don't know.

THE COURT: Now I would like to direct your attention to the conversations you had with Mrs. Jeffords concerning the two \$5,000 Government coupon bonds.

199

When was the first conversation, approximately?

THE WITNESS: Right after, I would say, her test at Groover, Christie and Merritt.

THE COURT: That was in the spring of 1959?

THE WITNESS: That is what I recall. I am not sure. We can find out.

THE COURT: I understand.

And how many more conversations did you have with Mrs. Jeffords concerning the bonds after that initial conversation?

THE WITNESS: We talked casually about it. I mean, I talked to Mrs. Jeffords, Judge Pine, two or three times a week. I may have seen her twice a week. And she would say, "Estelle, have these bonds, I really want you to have them" and I would say, "Just let's forget this".

THE COURT: Now that was what was said in the intervening time between the spring of 1959 and the fall of 1959 when you took the bonds?

THE WITNESS: I finally took them and did what she wanted me to do.

THE COURT: Now I want you to think very carefully and state to
200 me as accurately as you can what she said to you on the first occasion
when the bonds were mentioned.

THE WITNESS: That is in the spring?

THE COURT: In the spring.

THE WITNESS: Mrs. Jeffords told me that she hadn't been feeling
well, she had been to the doctor. Her father had had a serious stomach,
intestinal illness, she could easily have the same thing. She knew that she
had money for expenses. It could be a long illness, it could be an ex-
pensive illness, but she wanted me to have two bonds so that I would
always stand by her to take care of her if her resources became limited.
She also told me that as long as she was alive I would not have the use
of the coupons, they were for her benefit. Whatever was left of the
bonds upon her death would be mine.

THE COURT: That was said to you in the spring of 1959?

THE WITNESS: That was said to me in the spring. This is be-
fore -- this is the spring of 1959, but this is before she is really ill.
But she was afraid.

THE COURT: Now, when you acquired the bonds, what did she
say to you then, when you actually took the bonds into your possession?

201 THE WITNESS: As I say, this one day I came to Mrs. Jeffords'
house and she said, "I have thought up a way that we can do this and
we will have a business agreement. You take these bonds and take them
for \$25.00. Nobody says I can't sell them to you for \$25.00, and you
will take them that way if you think you are buying them."

And I said, "We have fought this so long, all right, we will do it",
and it was just that kind of a thing.

I wasn't -- it may sound silly to say I wasn't impressed with this.
I was doing something she wanted me to do. I wasn't -- the amount of
money didn't make any difference to me. There were two bonds, yes,
so they went in the bookcase.

Oh, I think there is something else, too, I should tell you, Judge,
Your Honor.

THE COURT: No, what she said, not what you tell me.

THE WITNESS: No, what she told me.

THE COURT: Yes.

THE WITNESS: As I told you before, Mrs. Jeffords always gave me advice. She always was telling me what to do and when to do it and how to do it, and I mean for my own benefit.

202 THE COURT: Please don't go into that.

State what she said if there is anything else.

THE WITNESS: So she was a woman of many secrets. And she said, "You take these bonds and you keep them; you don't discuss this with anyone, this is between us."

THE COURT: And that was the last that was ever said about the bonds?

THE WITNESS: Up until the time we were moving and I brought them from the house I was moving to put back at Mrs. Jeffords' for two days.

THE COURT: She never mentioned that you use the proceeds of the bonds to pay some of these expenses that she was incurring during her last illness?

THE WITNESS: She never. No, she didn't specify.

THE COURT: Never mentioned it?

THE WITNESS: She made no specification as to that.

THE COURT: Now I noticed that one of the bonds has coupons due in September?

THE WITNESS: Yes.

203 THE COURT: And did I understand you to say that you clipped those coupons and cashed them or put them in her account?

THE WITNESS: No. No coupons were clipped during Mrs. Jeffords' illness.

THE COURT: None whatever?

THE WITNESS: None whatever.

THE COURT: Now I would like to direct your attention to the cedar chest.

THE WITNESS: Yes.

THE COURT: When was it she first mentioned the cedar chest to you? If you can recall?

THE WITNESS: A number of years ago. Five, seven, ten. She always said that, "Estelle, the cedar chest is yours."

THE COURT: Now during that period, did the cedar chest have securities in it?

THE WITNESS: Yes, it did.

The reason I knew that the securities were in there, I worked with Mrs. Jeffords on her secretarial work, correspondence. She would have correspondence, say, "This is going to be split", so she would say, "Well, let's get up on the chest and see if this will make it."

204 Then I also know, I kept the records for income tax purposes. I would write on the left hand side the name and over here how many shares, and over here the value, and then all of that went down to the Internal Revenue for income taxes.

THE COURT: You kept track of the different dividends on the stock?

THE WITNESS: Yes.

THE COURT: Was that only the stock in the cedar chest or her other stocks and bonds?

THE WITNESS: Well, we would get it -- I mean, no, she had other stock down at the bank in the safe deposit box. That had Treasury Bonds in it down there and some stock. It was pretty full. And she had this other in the bottom of the cedar chest.

THE COURT: Now on the day that you caused to be removed this cedar chest, what did she say to you on that day?

THE WITNESS: She did not say anything to me on that day.

THE COURT: Well, what did she say to you the last time she referred to the cedar chest?

205 THE WITNESS: The last time she referred to the cedar chest was on the Thursday before the chest was moved, and Mrs.

Jeffords that morning -- I don't know whether it was morning or afternoon, but she had a --

THE COURT: I understand.

THE WITNESS: The breathing was belabored.

THE COURT: I remember that, but what did she say to you? I want to get that.

THE WITNESS: When she rallied, she looked at me and she said Estelle, you thought I was going to die and I said yes, I did, and in a little while she looked me straight in the eye and she said, "And you haven't taken the chest yet? And if you don't take it -- If I had died, you wouldn't be able to get the chest out of here."

THE COURT: Did she say anything about the contents of the chest?

THE WITNESS: Not that I recall. That was implicated.

THE COURT: Did she ever say anything about the contents of the chest?

THE WITNESS: Yes.

THE COURT: What did she say about the chest and its contents?

206 THE WITNESS: As I say, some years back Mrs. Jeffords told me that she had not named me in her will because the chest was for me; the things in there that I would enjoy, that my children would, plus the securities and it would be better to give me the chest than put me in her will.

THE COURT: She used the word "securities"?

THE WITNESS: Yes, she did.

THE COURT: Now, those securities were in her name, weren't they?

THE WITNESS: Yes.

THE COURT: Well you knew they couldn't be transferred without her making an assignment to you, didn't you?

MR. LASKEY: If the Court please, I object to the Court's question on the ground it is an incorrect assumption of law, under the Uniform Stock Transfer Act, a person who receives securities unendorsed can

require the endorsement either from the donor or from the estate of the donor.

THE COURT: Or from what?

MR. LASKEY: From the estate of the donor.

THE COURT: Oh yes, can require it. But at the time she had it she didn't have any endorsement on it, did she?

207 Were these securities endorsed by her in blank?

THE WITNESS: To me?

THE COURT: To anybody.

THE WITNESS: Not that I know of.

THE COURT: Were they in blank endorsed by her?

THE WITNESS: I don't understand.

THE COURT: On the back of the securities, generally there is an assignment, a place for an assignment.

THE WITNESS: They were never assigned to me.

THE COURT: They were never assigned by her?

THE WITNESS: No.

THE COURT: Did you ever say to her, "If you are going to give me these securities, you ought to sign the papers so that I --"

THE WITNESS: No, Judge Pine.

THE COURT: " -- so that I will have them transferred to my name?"

THE WITNESS: I never did. As I told you, I didn't know everything that was in her. It didn't make any difference to me.

As I have said before, none of this would have happened unless an
208 unfortunate situation has arisen.

It is ridiculous for me to say that it doesn't make any difference, but I am not a greedy person, ever.

THE COURT: When Mr. Bird came to see you that morning, did he take anything from the cedar chest other than what purported to be securities?

THE WITNESS: That is what I understood. I knew that he took

that whole envelope. There were three envelopes involved in this; I mean, as I say, there was a leather sort of a folder and a legal size envelope, and the large size accordeon envelope.

I was not paying strict attention to Mr. Bird. I mean he was looking at these things sorting while I am bringing things down from here and putting them up on the table.

THE COURT: And the rest of the contents were returned to the chest?

THE WITNESS: And they are still there, as they were, yet.

THE COURT: When the chest was transferred to your home, did you have the key?

THE WITNESS: Mr. Bird gave me the key.

THE COURT: Gave you the key?

209 THE WITNESS: Yes.

THE COURT: At the time it was transferred?

THE WITNESS: Yes.

THE COURT: Do you know where he got it?

THE WITNESS: Yes. The keys were in Mrs. Jeffords' pocket-book which was tied on the bedstead, the bed next to hers in her bedroom.

I think I showed Mr. Bird which was the right key, or that I thought was the right key.

THE COURT: Was the chest locked when Mr. Bird called on you that morning?

THE WITNESS: Yes.

THE COURT: After you took the nightgowns out, you relocked it?

THE WITNESS: That is right and I had the key with me all the time.

THE COURT: What did Mr. Bird say to you as to his reason for taking these securities?

THE WITNESS: He said he needed to record these; they were -- he had no record of these securities, stock certificates.

THE COURT: Did he say anything about returning them?

210 THE WITNESS: I asked him and he said the Court would decide.
THE COURT: The Court would decide?
THE WITNESS: Yes.
THE COURT: And then what did you say about that?
THE WITNESS: I said, "Very well."
THE COURT: That is all I have, gentlemen.
Do you have any further redirect or recross?
MR. LASKEY: Yes, Your Honor suggested a question I would like
to ask.

FURTHER REDIRECT EXAMINATION

BY MR. LASKEY:

Q. Taking up the matters in which Judge Pine asked you about
them, Mrs. McCord:

With respect to the conversations concerning the bonds and your
understanding with Mrs. Jeffords.

I recall your testimony either this morning or yesterday afternoon
with respect to an incident when you discussed with Mrs. Jeffords a
nursing home or transferring her to a nursing home?

I am not sure whether you had included that conversation in re-
sponse to His Honor and if it was a proper matter to be included in that
response.

211 Do you recall the conversation I have in mind? A. Yes, I do now.
Yes, I do.

Q. When did that occur, and tell us what it was? A. That was in
between nurses, when Mrs. Cole replaced Mrs. Rochambeau.

Q. And what were Mrs. Jeffords' words -- strike that.

When would that be when Mrs. Cole replaced Mrs. Rochambeau?

A. I would say around the first of November. I am estimating.

Q. But it was after your delivery of the check and taking of the
bonds? A. Oh, yes.

Q. What was the conversation? A. We were having a few problems
with agreement of nurses and some people were unhappy with one

another, and I said, "Instead of having this turmoil, I think it would be better if we had a very fine nursing home than trying to run this whole establishment here".

Q. To whom did you say that? A. Mrs. Jeffords.

Q. And what was her response? A. She said that she wanted to
212 stay home, that she could stay home, because there were funds to take care of her, and we had -- she and I had an agreement, and for me not to forget it -- and that was she was referring to the bonds.

Q. You also said in response to Judge Pine's question that none of this would have happened except for something unfortunate.

What did you mean by that something unfortunate? A. Just the accusatory manner in which I was handled in Mr. Sullivan's office upset me to the place that I thought it was necessary. In my mind I was being accused of taking something that I never had, and Mr. Bird seemed to be just as sure that I had it as I knew I did not have it.

Q. Now further in response to His Honor's questions concerning the chest and what was taken from it at the time of Mr. Bird's visit to your home on Monday in December, just before Mrs. Jeffords' death.

I understood you to testify either yesterday afternoon or this morning that there were envelopes containing receipts and other papers of that type. Am I correct in that recollection? A. Yes, sir.

213 Q. What happened to those papers? A. Some of them Mr. Bird kept and took back to the house, receipts; some that were very old were thrown in the waste basket.

THE COURT: Then all the contents of the chest were not returned to the chest?

THE WITNESS: No.

MR. LASKEY: That is all, if Your Honor please.

MR. LEEMAN: Your Honor?

THE COURT: Go ahead.

FURTHER RECROSS EXAMINATION

BY MR. LEEMAN:

Q. Mrs. McCord, when your deposition was taken on July 7, 1960, I will read your questions by Mr. Gray and your answers and ask you if this was your testimony:

"BY MR. GRAY:"--

MR. LASKEY: What page are you on, Mr. Leeman?

MR. LEEMAN: Page 49.

MR. LASKEY: I have it. Thank you.

BY MR. LEEMAN: Reading:

214 "Q. Mrs. McCord, coming now to this cedar chest, when was it that Mrs. Jeffords first said something to you about your having it, giving it to you?

"A. Around the end of October.

"Q. Was that the first time she ever mentioned the cedar chest to you?

"A. That was when she was sick and she was unhappy. I mean she didn't think that she was going to -- she didn't like being incapacitated and she told me, she said, "Your name is not in the will but I want you to have some of my things". She said, "I want you to have the chest. You have your children to hand things down to. I have no one." She wanted me to take it then.

She said, "We can sort the things out, and I said I just didn't want to take it, just to leave it there."

Was that your testimony? A. That was my testimony, sir. That's when she meant for me to make arrangements that day to take the chest, and I did not do it.

MR. LEEMAN: That is all, Your Honor.

THE COURT: Stand down. Take a seat by your counsel.

(Witness left stand.)

215

NEANE MICHALKA

was called as a witness by and on behalf of the plaintiff and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LASKEY:

Q. Would you state your full name, please? A. Neane Michalka.

Q. Spell that, please. A. M-i-c-h-a-l-k-a.

216

Q. How do you spell the first name? A. N-e-a-n-e.

Q. Have you ever testified before, Mrs. Michalka? A. Never.

Q. You are not upset because the Marshal made you take off your new hat in Court this afternoon, are you? A. Well, I got caught in the rain. I got wet.

THE COURT: You just sit back in your chair. There is nothing to be afraid of.

THE WITNESS: Thank you, Your Honor.

BY MR. LASKEY:

Q. Mrs. Michalka, where do you live? A. In California now.

Q. And what is your occupation? A. Companion-nurse.

Q. And are you on a case in California now? A. Yes, I am.

Q. And did you come to Washington at our request and our expense? A. I did.

217

Q. When did you go to California, Mrs. Michalka? A. I went to California in March of '61, I think it was. I have been out there a year and a half.

Q. And had you planned to make that a permanent residence at the time you went out? A. No, no I didnt. I expected to be back.

Q. Be back where? A. Back here in Washington.

Q. Had you talked with anyone about being a witness in this case before you left? A. I was interviewed by Mr. Gray.

Q. And were you expected to testify at the time you left and to be back in time, weren't you? A. Yes, I thought I would be back in time.

Q. Mrs. Michalka, how long have you been a practical nurse?

A. Oh, about something like 18 years.

Q. Where were you trained? A. In Houston, Texas.

Q. And were you licensed in Texas? A. No, I took a correspondence course with the National Nursing Service out of Chicago, and I graduated with them. And I went ahead with nursing in Houston, I
218 worked in the hospitals there and in private duty.

Q. About when did you come to Washington? A. Must have been about '52, '53, something around there.

Q. Did you work at your occupation of nursing when you came to Washington? A. Yes, and then I went to Doctor Taylor's office. I worked in his office for a year or so, two years.

Q. Were you nursing, practical nursing, in 1959? A. Yes.

Q. Were you on any registry? A. I was with the Federal Nursing Registry.

Q. At that time, particularly in December of 1959, to your knowledge, was there any requirement for licensing of practical nurses?

A. No, there wasn't.

Q. Did you sometime along about the second or third week of January, receive a call relating to a Mrs. Jeffords? A. That is right, yes, sir.

Q. As a result of that call, what did you do? A. I reported for duty.

Q. Where? A. At Mrs. Jeffords' home.

219 Q. Do you recall about when that was? A. I think it was the 17th of December, the 17th or 18th or December.

Q. Who did you see when you went to Mrs. Jeffords' house?

A. Well, I think the first person that I saw was the maid there.

Q. Do you recall her name? A. Anna May, I believe, or one part of her name was May, anyway.

Then I met a Mrs. Wilhite. She was another practical nurse. She was on duty there.

Q. And as far as you could tell, had she been on duty the previous night? A. Yes, I think she had.

Q. And after -- well, what transpired between you and Mrs. Wilhite? A. Oh, not much. She just showed me what was to be done, showed me the chart.

Q. And what, if anything, did she tell you about the patient?

A. No, she didn't.

220 Q. I meant about the physical conditions and the needs, and what was to be done? A. She said Mrs. Jeffords was very ill but she was very alert, too.

Q. Did there come a time that morning when Mrs. Wilhite left?

A. Yes, she left, and I was talking to Mrs. Jeffords. She was sitting up in bed at the time.

Q. All right, now, how did she appear to you with respect to mental alertness? A. Well, just fine. She was very alert, and when I went in she said, "We are going to get along fine because you have a

dimple and I always get along fine with people with dimples."

Q. Now, during that day did Mrs. Jeffords say anything to you with respect to a certain cedar chest? A. Indeed she did.

Q. Will you tell us what that was? A. Yes. I hadn't been there but a very short time and I was by her bed and she said, "There is something I want you to do for me", and I said, "I will do anything I can, what is it, Mrs. Jeffords?"

221 She said, "Do you see that cedar chest over there? I want Mrs. McCord to have that cedar chest and everything in it. Everything in it belongs to Mrs. McCord."

And at the time I had never met Mrs. McCord, and I thought perhaps she was her daughter and I said, "Is Mrs. McCord your daughter", and she said, "No, she is as dear or dearer than a daughter and she must get this cedar chest out before I die".

And I said, "Oh, you're not going to die", and she said, "Yes, I am going to die on Christmas Day", and she insisted on me talking to Mrs. McCord, which I did when Mrs. McCord came in.

Q. Now, on this Christmas Day aspect of it, did she mention anything else with respect to Christmas Day and anyone else's death on Christmas Day? A. Her husband. She said her husband died on Christmas Day and she wanted to die on Christmas Day and she intends to die on Christmas.

Q. Did you think she was serious? A. Yes, I thought she was serious. She really meant it.

222 Q. What did you do? A. Well, when Mrs. McCord came in, I told her what Mrs. Jeffords had said to me, and Mrs. McCord said, "Well, I don't feel like I should do that". She said, "It seems such a cold thing to do", and I told her, I said, "Well, you know Mrs. Jeffords may not live, and you want her to die happy, so you will have to take the cedar chest out or she will never be happy."

Q. Was there any other incident or any other discussion concerning that chest that you can recall? A. Oh, every time I went around Mrs. Jeffries, right away she would mention that cedar chest and insist

on me getting Mrs. McCord to take it out of the house.

Q. Now, were you there at any time when that chest was taken?

A. Yes, I was on duty the day the chest was taken out.

Q. Do you recall how it went out or anything about it?

Just tell us whatever you can recall. A. Well, as well as I can recall, at first some man came up to take it out and he couldn't handle it alone, and then someone else came in and helped him. So the two of them carried it out.

223 Q. Do you recall where it was at the time the men came to take it? A. Yes. It was in Mrs. Jeffries' bedroom, near the foot of her bed against the wall.

Q. Do you know any people who took it, did you recognize them?

A. I beg your pardon?

Q. Did you know any of the people who actually, physically handled the chest? A. No, I hadn't met them but I understand one of them was Mrs. McCord's son-in-law, and I never met the other one, I didn't know, but I think perhaps it was Mr. McCord.

Q. Do you recognize this gentleman seated here? A. Yes.

Q. Does he fit into that picture anywhere? A. I think he does.

Q. In what respect? Was he one of the men? A. I believe he is, because I was quite busy that morning and I didn't pay particular attention to them. I was just anxious for them to get it out.

224 Q. Did you know while you were there in the house taking care of Mrs. Jeffords, did you have occasion to meet Mr. Bird? A. Oh, yes, I met Mr. Bird several times.

Q. Do you recognize him here in the courtroom today? A. Yes.

Q. Is he the gentleman seated over there directly in front of me now? A. Yes.

Q. Who paid your charges for practical nursing? A. My checks, you mean, who gave me the checks?

Q. Yes, who gave them to you? A. Mr. Bird.

Q. When this chest was moved, can you tell us whether or not Mr.

Bird was in the house? A. Well, I am not sure but I think he was downstairs. He had been upstairs earlier and I think he was still in the building, in the house. I think he was downstairs at the time.

Q. Did you hear any other discussions about the chest or about removing the chest at any time before Mrs. Jeffords passed away?

A. Oh no, I didn't hear any more about it.

225 Q. Did you do just 12-hour duty or did you do more duty? A. Well, I had to do double duty because Mrs. Wilhite walked out and left it all. So I had to take over her job and mine, too.

Q. Did you stay there until Mrs. Jeffords' death? A. Yes. I was there when she died.

Q. Are you related in any way to Mrs. McCord? A. No, sir.

Q. Do you have any interest in Mrs. McCord's affairs at all?

A. No, sir.

MR. LASKEY: Your witness.

(Short recess.)

CROSS EXAMINATION

BY MR. LEEMAN:

Q. Mrs. Michalka, do you know who sent for you to come for employment on this job? A. I was sent on the case by the Federal Nursing Service.

Q. Do you know who contacted the Federal Nursing Service?

226 A. Well, I imagine Mrs. McCord. I don't know.

Q. You don't know? A. I don't know that because all I know was the Registry called me and told me to report for duty there, which I did.

Q. Now, what day was that when you first came on duty? A. It was the 17th or 18th that I went on duty. It has been quite some time and I don't quite remember, but seems to me like it was the 17th.

Q. Of what month? A. December.

Q. And Mrs. Jeffords died on the 25th. So that you were there from the 17th until the 25th? A. Yes, sir.

Q. Now, who greeted you when you first went on this job?

A. Well, I think the first person I saw when I went in was the maid, and then I met Mrs. Wilhite, the other nurse, and then I went upstairs to see Mrs. Jeffries, and Mrs. Wilhite introduced me to Mrs. Jeffries.

Q. Did you have a conversation with Mrs. Jeffords at that time?

227 A. She was setting up in bed and we were talking, and she said that -- well, she says, "I'm sure we will get along." She says, "I get along with anyone with a dimple."

I said, "It used to be a dimple, it is a wrinkle now" and she laughed about that and said, "Well, there is something I want you to do for me". She said, "You must do something for me."

I said, "Well, I will do what I can."

She said, "Well, I know I am going to die, and that cedar chest over there is Mrs. McCord's and everything in it belongs to Mrs. McCord and I want her to take it out of here before I die."

* * * * *

228 Q. Is that the first conversation you had with her after you were introduced? A. I hadn't been there but just a short time, a few minutes, when she told me that.

Q. And what time of day was that? A. Well, it was in the morning. I went on duty in the morning.

Q. Was it around 7:00 in the morning? A. No, I think I went on at 8:00. At 8:00.

Q. At 8:00 o'clock? A. Yes.

Q. And you remained on duty all that day? A. Yes.

Q. And what time did you leave that evening? A. I think it was around 7:30 or 8:00 I left that evening.

Q. Now, after she made that statement to you about the cedar chest, what was the next thing she said to you? A. Well, I don't remember. I don't think it was very much of anything. I went ahead with my duties and she just relaxed.

229 Q. She didn't talk very much after that? A. No, she didn't talk a whole lot, but she was perfectly alert and she knew everything that was going on.

Q. Now, did she have a lunch? A. Yes, she had her lunch.

Q. What did she eat on that day? A. I can't remember. I am sorry, I don't remember what she had for lunch that day.

Q. And did you give her any medication? A. Yes. I gave her the medication that the doctor ordered.

Q. Do you recall what that was? A. A half a cc. of Demerol, I believe.

Q. Demerol? A. A half a cc. Because she had had a heart attack.

Q. And had she had doses of Demerol before that day, do you know, according to the chart? A. Well, I think off and on she had to have it.

Q. And was that prescribed by the doctor? A. Yes. Any medication we gave her was prescribed by the doctor.

* * * * *

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FURTHER CROSS EXAMINATION

BY MR. LEEMAN:

254 Q. Mrs. Michalka, when you were on the stand a couple of days ago, I believe you testified that after you were introduced to Mrs. Jeffords, she looked right at you and said she thought you were going to get along and so forth? A. That is right.

Q. Because you had dimples? A. That is right.

Q. Now, where were you standing at that time? A. Right by the side of her bed.

Q. Right by the side of the bed? A. Yes. In fact, I had hold of her hand. She was setting up.

Q. Was she looking right at you? A. Oh, yes.

Q. She had her head turned so that she could see you? A. Yes.

Q. And she was looking directly at you? A. That is right.

Q. When she told you about the dimples? A. That is right.

(Laughter.)

255

Q. Did you ever find out that she had no sight in her eyes looking

straight forward? A. No, I didn't know that. You certainly wouldn't have known it in talking to her because her eyes looked perfectly all right to me.

Q. And at noe time did you find out that there was anything wrong with her eyes? A. No, I didn't.

Q. Mrs. Michalka, I want to read you a letter from the doctor who examined her eyes in Baltimore.

MR. LASKEY: If the Court please, I would object to the reading of the letter.

THE COURT: I sustain the objection.

That is not proper impeachment of this witness, unless she has seen the letter or concurred in the letter.

MR. LEEMAN: Should I have this marked Defendant's Exhibit?

THE COURT: Yes, you have it marked.

THE CLERK: Defendant's Exhibit Number 3.

(The document above-referred to, was marked Defendant's Exhibit No. 3 for identification.)

256

BY MR. LEEMAN:

Q. Mrs. Michalka, I ask you to read that letter.

THE COURT: Silently.

THE WITNESS: All right.

BY MR. LEEMAN:

Q. Mrs. Michalka, would that change your testimony any as to whether or not she was looking directly at you? A. Well, I thought she was looking directly at me. I was standing right by the side of her bed. Of course, she was setting up in bed, but I thought she was looking directly at me. I could be mistaken. She may have had her head turned a little.

Q. She may have had her head turned a little? A. Yes.

Q. This letter is from --

MR. LASKEY: If the Court please, I don't think counsel's statement as to what the letter is or where it is from is proper.

THE COURT: I sustain the objection.

MR. LEEMAN: May I read to the witness a paragraph from this letter and ask her if that is what she read?

MR. LASKEY: I object.

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259

THE COURT: Sustained.

MR. LEEMAN: I will have this folder marked Defendant's Exhibit.

THE CLERK: Defendant's Exhibit Number 4.

(The document above-referred to was marked Defendant's Exhibit No. 4 for identification.)

BY MR. LEEMAN:

Q. Now, Mrs. Michalka, I will ask you to look at that and tell the jury what that is. A. Well, it is a chart, a nursing chart.

THE COURT: What is it?

THE WITNESS: A chart.

MR. LEEMAN: Nurse's chart.

THE WITNESS: Yes, Nurse's chart.

THE COURT: Now she has answered what it is.

MR. LEEMAN: I am giving her an opportunity to look at it, Your Honor.

THE COURT: Do you want her to read throughout the whole document?

MR. LEEMAN: Well, I want her to identify what part of it is written by her.

260 THE COURT: Oh, then ask that question.

BY MR. LEEMAN:

Q. Now, Mrs. Michalka, is that your handwriting on this page?

A. No, it isn't.

THE COURT: That won't mean much for the record.

I think if you want to indicate what is her handwriting, perhaps it ought to be checked, or by some other method of that kind.

When you say, "Is that your handwriting", that doesn't mean anything when you point to something -- I mean from the standpoint of the record or the jury.

MR. LEEMAN: Yes, Your Honor. Thank you. I will make it clearer, or try to.

THE WITNESS: I wrote this here.

BY MR. LEEMAN:

Q. Now, Mrs. Michalka, in this chart --

THE COURT: That is the chart of Mrs. Jeffords, is it? That has not been said yet but I assume that is it.

BY MR. LEEMAN:

Q. This is the chart that was kept for Mrs. Jeffords? A. Yes.

261 Q. In her last illness? A. Yes, it is.

Q. Now, Mrs. Michalka, there are a number of blank pages in the beginning of this chart, is that right? Will you look and see? A. Yes. Yes, the temperature chart is blank.

MR. LASKEY: If the Court please, I think it might be helpful if you would explain to the witness that she has to keep her voice up so the jurors and Your Honor can hear her.

THE COURT: Yes.

MR. LASKEY: Do you understand that, Mrs. Michalka?

THE WITNESS: Yes.

THE COURT: You are not just talking to counsel. You are speaking to all of us.

THE WITNESS: I am sorry.

Yes, that is the temperature chart. It is blank.

THE COURT: I can't hear you.

THE WITNESS: It is the temperature chart, these blank pages.

262 BY MR. LEEMAN:

Q. Now, is this a temperature chart, this page that is written on?

A. This has the temperature and the pulse.

Q. Now, Mrs. Michalka, there is a number of pages apparently removed from that chart. A. Well, I wouldn't know a thing about that.

Q. You don't know about that? A. I don't know anything about the pages being removed from the chart.

Q. Now, on the first page that appears to be writing, at the top --

A. That is my name but I did not write that.

Q. That is your name.

So that none of this on this page is your writing?

MR. LASKEY: By "this page" you mean the first written page in the chart?

MR. LEEMAN: The first written page in the chart, yes.

THE WITNESS: I am not sure; Mrs. Wilhite must have written that but --

263 THE COURT: The question is whether it is yours, madam.

THE WITNESS: No, no, I didn't write this.

BY MR. LEEMAN:

Q. Now, Mrs. Michalka, turning to the second page, that is your writing? A. That is my writing, yes.

Q. And this entry "Demerol"? A. Yes.

Q. Does that mean you administered it? A. A half a cc.

Q. What? A. One half cc.

Q. And what did you feed her as recorded on that page?

MR. LASKEY: You are still on the second written page?

MR. LEEMAN: That is correct.

THE WITNESS: She ate very little.

THE COURT: Does it show the date? I haven't heard that yet.

BY MR. LEEMAN:

264 Q. What is the date on the top of that page? A. Oh, the 12 and 21st.

MR. LASKEY: Do you mean the 12th month and 21st day?

THE WITNESS: Yes, 1959. And I had went on duty 7.

THE COURT: The question is what did you feed her. Isn't that it?

MR. LEEMAN: Yes, Your Honor.

THE WITNESS: Well, she had it intravenously, dextrose.

BY MR. LEEMAN:

Q. Speak that louder and plainer, please. A. Dextrose. Because she wasn't eating. She was getting weak.

Q. Is that what you call intravenous feeding? A. Yes.

Q. Now, what does that record show as to her condition? Do you have some entries as to that? A. Her pulse was 81, and her pulse was weak.

Q. Now, Mrs. Michalka, will you read these entries on the right side of that page? A. "I powdered the patient and gave her back care."

265 THE COURT: Gave her what?

THE WITNESS: Back care. Powdered her and rubbed her back.

There was a great deal of fluid in her throat, and at 9:30 I dried and powdered the patient again, and at 11 a.m. I gave her the Demerol, one half cc. And then there was no change.

Then later on she got the dextrose started, and there still was no change, and I turned the patient and gave her bedside care.

At 8 p.m. the patient was having trouble with the fluid in her throat. I turned the patient and gave her back care, and her breathing was much better.

I bathed the patient at 6 o'clock. I bathed the patient and gave her back care and made her comfortable.

Q. And that is the last entry on that column on that page?

A. That is right.

Q. Now, Mrs. Michalka, the next, or immediately following page.

266 MR. LASKEY: That is the third page in the book which has handwriting on it?

MR. LEEMAN: Yes.

BY MR. LEEMAN:

Q. Is that your handwriting? A. Yes.

THE COURT: What is the date?

THE WITNESS: The 12th month and the 22nd day, 1959.

"Patient seems to know us. She opened and closed her eyes and a faint nod of the head that she knew me."

At 11:10 I turned the patient, gave her back care, and she was sleeping, and there was no change.

Then at 12:30 the breathing was heavy.

1 o'clock, no change.

At 1:30 I turned the patient and gave her back care. Her breathing was natural at 2:30, and I turned her and gave her back care again and there wasn't any change. And the I-V was stopped at 2:40 and there was still no change.

THE COURT: I-V is intravenous feeding?

THE WITNESS: Sir?

THE COURT: I-V is intravenous feeding?

267 THE WITNESS: Yes.

THE COURT: We are lay people so we have to understand your terms.

THE WITNESS: I am sorry, sir.

At 5:30 she had a very good night and the intravenous started again at 5:15.

BY MR. LEEMAN:

Q. Would that be a.m.? A. 5:15 in the morning.

Q. On this next day? A. This is the 12 and the 24th, 1959.

Q. That would be the next day? A. Yes. No --

Q. This is the 23rd?

MR. LASKEY: You started out on the 22nd.

THE WITNESS: This is the 22nd up here, and I didn't write this.

I don't know --

MR. LASKEY: Could we have it identified what she means by "this"?

THE WITNESS: Mrs. King, the other nurse, wrote this down here.

BY MR. LEEMAN:

Q. What is that that is written that you didn't write? A. It said,

268 "Intravenous started 5:15. Condition unchanged."

Q. Now will you turn to the next page?

MR. LASKEY: Which is the fourth written page?

MR. LEEMAN: That is right.

BY MR. LEEMAN:

Q. What is the date of that? A. Now, this is the 12-23-59.

The patient was very weak and her pulse was 140 and respiration

49.

"The patient has no change. Some blood on the pad coming from the genital areas. Complete bed bath and changed."

"Visit from doctor."

At 2 o'clock the doctor set up the intravenous again.

Q. Would that be the afternoon? A. I didn't write this.

Q. Well, are these your entries up here? A. No --

Q. I mean over here. A. Over here, yes.

269 Q. Well, you didn't write this on the left side of the page?

A. Patient -- yes, I wrote this, but I didn't write this down over here.

"Patient breaths easier. Breathing with no rattle in throat."

"Washed and bathed her, made her comfortable, and applied vase-line to her lips."

That was 5:30.

This was written by me.

THE COURT: Don't talk so low, madam. We have to hear you.

THE WITNESS: Well, I was just telling him this was not written by me here. This was written by the doctor.

MR. LASKEY: Referring to the entry on the bottom of page number 4?

THE WITNESS: Yes.

MR. LASKEY: And on the right hand side?

THE WITNESS: Yes.

BY MR. LEEMAN:

270 Q. Now, will you read the answer that you say was written by the doctor? A. "2 p.m." -- well, it is awfully hard to read the doctor's writing, frankly.

THE COURT: Well, if you can't read it, say so.

MR. LASKEY: I would say that is a common experience, Your

Honor.

THE COURT: Yes.

THE WITNESS: "25" -- looks like 25 milligrams.

THE COURT: Don't read it if you can't. Just say so.

THE WITNESS: Well, I can't read it.

It is pulse 140, and respiration 48.

I can't read that there.

BY MR. LEEMAN:

Q. Do you recognize the doctor's signature? A. Yes. That is Doctor Richwine.

Q. And you can recognize that as the writing of Doctor Richwine?

A. Yes.

And this over here is mine.

MR. LASKEY: You are now referring to page number 5, are you?

271

THE WITNESS: Yes.

And this was on the 12th month and the 25th, 1959, at 7 a.m.

BY MR. LEEMAN:

Q. Now will you read those entries? A. "Patient seems to be no change in the patient. Pulse 140, respiration 47."

THE COURT: Is this on the 24th now?

MR. LEEMAN: The 25th.

THE WITNESS: Yes.

"I dried and powdered patient. There was some rattle in the throat. Breathing seems more difficult right now. Patient turned.

"Patient died at 8:30."

THE COURT: A.M. or P.M.?

THE WITNESS: P.M. 12-25-59.

MR. LEEMAN: Now, I will have this prescription sheet marked as Defendant's Exhibit.

THE CLERK: Number 5.

(The document above-referred to was marked Defendant's Exhibit No. 5 for identification.)

272

BY MR. LEEMAN:

Q. Now, Mrs. Michalka, I will hand you a paper and ask you to tell us what that is. A. It is "Demerol, one half cc."

MR. LASKEY: That is not responsive, if the Court please. I don't mean to quibble but he asked her what that was.

BY MR. LEEMAN:

Q. And what name is printed at the top of it? A. Doctor Richwine.

THE COURT: Is that a prescription blank, is that it, or a prescription?

THE WITNESS: Yes, it is a prescription blank, and it is filled by -- I don't know what drug store it was filled by, but it was one of Doctor Richwine's blanks, and it was demerol, one half cc.

BY MR. LEEMAN:

Q. You recognize that as Doctor Richwine's writing? A. Well, as far as I know it is because I wasn't too well acquainted with Doctor Richwine but I think that is his writing.

273 THE COURT: Gentlemen, I understand the witness we referred to is now in the witness room.

MR. LEEMAN: All right, Your Honor.

THE COURT: We'll get through with this witness first now.

BY MR. LEEMAN:

Q. Is Demerol administered in the cases where patients have pain, Mrs. Michalka? A. Yes, and also in heart conditions.

Q. For heart conditions? A. That is right.

Q. And for to relieve pain? A. Yes.

MR. LEEMAN: I think that is all, Your Honor.

MR. LASKEY: Would Your Honor indulge us a moment?

THE COURT: Yes.

MR. LEEMAN: While we are waiting, Your Honor, there is one other question that I might ask the witness.

THE COURT: All right, go ahead.

BY MR. LEEMAN:

Q. Mrs. Michalka, do you know whether or not Mrs. Jeffords had a bag of any kind pinned to her clothing? A. When I first went
274 there she had a little bag pinned on her shirt. What was in it, I do not know, and I don't know what became of it because I don't know what was in it, I didn't see what was in it, it didn't concern me.

Q. I will ask you to look at this and ask you if you can identify that as the bag? A. No, I could not because I didn't pay that much attention to it.

Q. Well, when you changed her clothing, did you have occasion -- what happened to it then? A. Well, when I changed her clothing, why, a lot of times I didn't take that little shirt off at all because the doctor said she was too weak to bathe her very much, and to just be as gentle with her as I could.

Q. Well, did you have occasion when you changed her that you felt the bag? A. No, I didn't feel the bag.

Q. Did you know whether or not there was anything in the bag?
A. No, sir, I did not.

Q. Well -- A. I wasn't interested in it.

275 Q. I will ask you if this bag I have exhibited to you is similar to the one that was pinned to her clothing? A. To be frank with you, I couldn't tell you.

THE COURT: Do you have any redirect examination?

MR. LASKEY: Yes, Your Honor, I do.

REDIRECT EXAMINATION

BY MR. LASKEY:

Q. Mrs. Michalka, when did you first see this book when you were at Mrs. Jeffords' house?

Now remember, I am standing here and we are looking at this, but the jury wants to hear you also. A. Well, I first saw the book

when I went on duty that morning when Mrs. Wilhite had the book.

Q. And it was there. You did not bring that book? A. No, no I didn't bring the book. Mrs. Wilhite had the book.

Q. After Mrs. Jeffords' death, did you see the book again?

A. No, I never saw the book again. I didn't know what became of it because, as a rule, that is turned over to the doctor.

276 Q. You didn't see the book from that day to this, is that correct?

A. That is right, I never saw the book until today.

Q. Did you make entries on each day that you were there?

A. Yes.

Q. And according to your testimony of Tuesday, you went on the case on Thursday, December 17th? A. Yes.

Q. And there was a chart there that had entries in it at that time? A. Yes, sir.

Q. Now, did you make entries on the 17th and on the 18th and on the 19th and on the 20th? A. Yes, but those pages are gone.

MR. LASKEY: That is all I have, Your Honor.

MR. LEEMAN: That is all, Your Honor.

* * * * *

238

HARLOW MC CORD

was called as a witness by and on behalf of the plaintiff and having been first duly sworn, was examined and testified as follows:

239 MR. LEEMAN: Your Honor, it will be understood that his testimony will be interrupted for the doctor and for Mrs. Michalka on Thursday morning?

THE COURT: Maybe we will get through with him before that.

MR. LASKEY: I don't think it will take that long. He had only the one instance so far as our case.

THE COURT: All right.

DIRECT EXAMINATION

BY MR. LASKEY:

Q. State your full name, please. A. Harlow Clyde McCord.

Q. You are the husband of Estelle McCord, who is the plaintiff in the suit filed in this Court? A. I am.

Q. And you are also the same Harlow McCord who is the defendant in the third party complaint? A. Yes, sir.

Q. Mr. McCord, you knew of the association between your wife and Mrs. Jeffords, did you not? A. I did.

Q. As a matter of fact, did you, at one time, live at Mrs. Jeffords' house yourself? A. I did.

240 Q. Where did you meet your wife? A. At Mrs. Jeffords' home.

Q. Tell us in brief what you observed prior to your marriage as to the nature of the relationship between Mrs. McCord and Mrs. Jeffords. A. I always felt, I believe, and I have heard, that it was a very close, an extremely close relationship.

Q. What was your occupation at the time that you met Mrs. McCord? A. I was assigned to the Washington office of the Aluminum Company of America as a salesman.

Q. Are you still with that company? A. I am.

Q. In what capacity, sir? A. I actually have no title. I no longer report to the sales department. I report directly to the vice president, who is in charge of governmental relations.

Q. Now, Mr. McCord, direction your attention to a certain cedar chest and the removal of that chest from the Woodley Road home of Mrs. Jeffords to your home. Tell us all you know about that incident.

241 Fix first, for us, the approximate date, if you can. A. The day of the week was on Saturday morning. I believe that to be the 19th of December, 1959.

Q. How did you come to go there and what happened? A. I had gone to my office on Saturday morning to clean up some work which had not been completed the day before, and I received a telephone call asking that I come to Mrs. Jeffords' home and assist my son-in-law in the removal of the chest simply on the basis that it was a little bit too much for one man to handle.

Q. Did you go there? A. I did.

Q. All right, what happened? A. With my son-in-law, Mr. Robert Collier, and I removed the chest. We had to carry it down a flight of steps, and took it out the front door, there would be then some more steps, and we eventually placed it in the trunk of my son-in-law's automobile. We removed also the picture that Mr. Bird wished to have removed; we put that in the car, and I believe there was another piece of furniture but I am not too clear on that one.

We took all of the articles to our home at 2928 Garfield Terrace, removed them from the car, placed all of them in the recreation room.

242 Q. Now while you were at the Woodley Road home of Mrs. Jeffords, did you have occasion to see Mr. Bird? A. Yes, I saw Mr. Bird.

Q. Did you know Mr. Bird? A. Yes, I had met Mr. Bird previously.

Q. Did you have any conversation with Mr. Bird on that day? A. None that I can recall other than the usual pleasantries that you converse about when you see somebody that you haven't seen for a day or two.

Q. Now, was there anything said that you recall about the picture to which you had reference? A. Mr. Bird asked if we would remove the picture from the home. I understood for the reason that he wished

to have the picture and he was not certain as to just what would happen to the picture in the way of who owned it if it was not removed at that time.

Q. Was anything said by Mr. Bird that had any relationship to the chest which you removed? A. None that I can recall.

MR. LASKEY: Your witness, Mr. Leeman.

243

CROSS EXAMINATION

BY MR. LEEMAN:

Q. Mr. McCord, have you got that pamphlet with you today that you were reading about how to be a good witness? A. Yes.

Q. And you studied that? A. Certainly.

Q. Now, Mr. McCord, you own some stocks, do you not? A. Yes.

Q. And are they held jointly with your wife? A. Some of them.

Q. And the house that you sold before you bought the new one, you owned that jointly with your wife?

MR. LASKEY: If the Court please, I will object to this being beyond the scope of the direct examination. I object only if Mr. Leeman wishes to make the witness his witness at this time, I have no objection to his doing so provided he conducts his examination in the usual manner.

THE COURT: Overruled.

I think he can put him in context in his relationship with his wife.

244

You may answer.

THE WITNESS: You refer to 3286 Chestnut Street, I presume?

MR. LEEMAN: Yes.

THE WITNESS: Yes, that house was jointly owned by Mrs. McCord and myself.

BY MR. LEEMAN:

Q. What you call a joint tenancy, the survivor would own it, is that right. Is that the way you understood it? A. That is the way I understand it, sir.

Q. And then the new house that you purchased, that was purchased jointly? A. Oh, yes.

Q. And at that time you had a joint banking account? A. Yes.

Q. And you had a joint safe deposit box? A. Yes.

Q. In fact, you and your wife operated in perfect harmony on finances; is that right? A. So long as the finances were earned by us jointly, I would believe that is correct.

Q. Well, you enumerated all these transactions that you had jointly.

245 Now, with respect to this cedar chest your wife called you and your son-in-law and you assisted her in removing that to your home; is that right? A. I did.

Q. And that got there on Saturday? A. That is correct.

Q. And did you and your wife discuss that cedar chest any time between Saturday and Monday morning? A. I don't recall that we did. Mrs. McCord was -- if she was at home during that period, it was for such a short time that I cannot believe that we could have discussed it, and I do not recall that we did discuss it.

Q. And she didn't tell you that this is the cedar chest that Mrs. Jeffords has given me, and the securities are in it? She didn't tell you that, did she? A. No, sir.

Q. Did she ever tell you that? A. Oh, yes.

Q. And when was that? A. I believe I would fix that time after Mr. Bird's visit at which time Mrs. McCord and Mr. Bird examined, or Mr. Bird examined the contents, and Mrs. McCord was present. Certainly Mrs. McCord told me that Mr. Bird had removed certain

246 securities, or some securities, from the chest and had taken them with him.

Q. And you are, or were, a salesman for Alcoa Company? A. That is correct.

Q. You have years of experience as a salesman? A. In Washington, D.C., yes.

Q. And you do own stocks jointly with your wife? A. I do.

Q. And at that time she told you that the securities were in there, did you display any interest in them? A. Not particularly.

Q. Did you know the amount? A. No, sir.

Q. Well how about these two \$10,000 Government Bonds?

MR. LASKEY: \$5,000.

MR. LEEMAN: Pardon me.

BY MR. LEEMAN:

Q. The two \$5,000 Government Bonds, when did you find out about them? A. Well certainly after the cedar chest came to our home, and I would believe several days after that time.

247 Q. What was that? A. I said certainly I can fix the time only in that it was after the cedar chest was placed in our home, and I would believe several days after that Saturday. I cannot fix an exact time.

Q. Well, when you found out that your wife had these two \$5,000 Government Bonds, did you suggest to her that she notify the executors of this estate? A. No, sir.

Q. Now, Mr. McCord, you and your wife file joint income tax returns, is that correct? A. That is correct.

Q. Now, in 1960, for the year 1959, did you make any return for income from the Jeffords' estate? A. No, I did not. No, sir.

Q. Have you made any return since that time at any time for income from the Jeffords' estate? A. No, sir.

MR. LEEMAN: That is all.

REDIRECT EXAMINATION

BY MR. LASKEY:

Q. Have you had any income from the Jeffords' estate? A. No, sir.

248 MR. LASKEY: Nothing further, Your Honor.

* * * * *

288 ROBERT K. COLLIER

was called as a witness by and on behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LASKEY:

* * * * *

290 Q. Now, was there an occasion during the month of December when you received a telephone call which had relationship to your going to Mrs. Jeffords' house? A. Yes, sir.

291 Q. Who called you? A. Mrs. McCord.

Q. And as the result of that telephone call, did you go to the house? A. Yes, sir.

Q. For what purpose? A. To help move a cedar chest from Mrs. Jeffords' to Mrs. McCord's home.

Q. You went to the house? A. Yes, sir.

Q. About what time of day was it, if you can recall? A. Well, actually it was between 11:00 and 11:30 when I arrived at Mrs. Jeffords' approximately. Before noon, I know that for sure.

Q. Have you told us what day of the week this was? A. It was on Saturday, week before Christmas. The Saturday before Christmas.

Q. Directing now your attention to that occasion, will you tell us just what happened from the time you arrived at the house and left your automobile? A. When I arrived at the house, I was greeted at the door

292 by Mr. Bird.

Q. By Mr. Bird? Do you see him here in the courtroom? A. Yes, sir.

Q. And is he the gentleman seated at the counsel table to my left, center? A. Yes, sir.

Q. Go ahead, sir. A. He introduced himself and I introduced myself.

Q. You had never met him before? A. Not that I recall before.

Q. What was said? A. He advised that he wanted me to help move a cedar chest that Mrs. Jeffords had given Mrs. McCord, from Mrs. Jeffords' up to Mrs. McCord's house.

Q. And what else, if anything, was said, or done?

Just give us as best you can a narrative account while you were there in the house. A. Yes, sir.

And he advised that Mr. McCord was coming later to help me carry the cedar chest. Meanwhile, he asked me would I help him get a picture off the wall, take a picture off the wall that Mrs. Jeffords had given him,

that he was having some problems trying to get it down. I said I would
 293 be glad to.

I took the picture down. It was a picture of a lion, as I recall. After I took it down, we set it over beside of the wall and we just discussed the picture. He mentioned that the picture itself was a very good one, that Mrs. Jeffords had painted, in that it is -- one thing he liked about it, the eyes of the lion would follow you anywhere you may go in the room.

Then he asked me, after we got the chest in the car, take the picture and put it in my car and also take it up to Mrs. McCord's house.

Q. Did there come a time when Mr. McCord arrived? A. Yes, sir.

Q. What happened then? A. When Mr. McCord arrived, approximately about 25 minutes later, he and I went up to the top of the steps in Mrs. Jeffords' home, picked up the chest, took it and put it in the trunk of my car, also took the picture and put it in the back seat of my car and took it to Mrs. McCord's.

Q. And where did you put it when you got there? A. In a recreation
 294 room in Mrs. McCord's home.

Q. Where was the chest located, when you and Mr. McCord first picked it up? A. At the top of the stairs in Mrs. Jeffords' home.

Q. Do you recall how large a chest it was, a brief description?
 A. Well, I recall that the chest wasn't tremendously heavy or anything like that, but it would take two people to carry it because of its size. Seems to me it was approximately four and a half to five feet by two and a half or two feet deep, something like that. I couldn't give you the exact dimensions of it.

Q. But it was not something that could be easily handled by one man? A. Not by one man.

MR. LASKEY: Your witness, Mr. Leeman.

* * * * *

303

CHARLES B. SULLIVAN

was called as a witness by and on behalf of the plaintiff and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LASKEY:

Q. State your full name, please, sir. A. Charles B. Sullivan, Jr.

Q. And are you a member of the Bar of this Court, Mr. Sullivan?

A. I am.

* * * * *

304 Q. Did there come a time that you had a professional association with Mr. Bird in connection with the estate of Laura Jeffords?

A. There did.

Q. When did that relationship begin? A. That relationship began the latter part of December, 1959. Either on the 29th or the 30th. It was just before the New Year Holiday.

* * * * *

331 Q. Mr. Sullivan, on the occasion of December 29 or 30, 1959, did you at the apartment of Mr. and Mrs. Bird make a list or inventory of certain items?

MR. LEEMAN: I object.

THE COURT: Overruled.

THE WITNESS: I did.

BY MR. LASKEY:

Q. And were you by your subpoena in this case to appear here today, asked to produce the original of that list? A. The subpoena does so provide.

332 Q. Were you able to produce the original? A. No, I spent an hour and a half looking for it and I was not able to find it.

MR. LASKEY: Would you mark these two separately, please, the letter and the paper attached to it?

THE CLERK: Plaintiff's Exhibits Number 6-A and 6-B.

(The documents above referred to were marked Plaintiff's Exhibits Number 6-A and 6-B for identification.)

BY MR. LASKEY:

Q. Mr. Sullivan, showing you what has been marked as Plaintiff's Exhibit 6-A and 6-B for identification, I will ask you to say, without disclosing the content of either document, whether by examining first the letter you can identify the letter or carbon of the letter, and, second, whether that aids you in identification of the document, Exhibit 6-B attached to it. A. The letter is mine, it is my signature, and my letterhead. 6-B is mine. This is a photostat of the original.

333 Q. A photostat of the original which you said you were unable to find? A. Correct, sir.

Q. And what was the original document?
May I separate these two now, Your Honor?

THE COURT: Yes.

BY MR. LASKEY:

Q. Directing your attention now only to 6-B, can you state what the original of that was? A. This was a list prepared by me on editorial or legal pad paper, of a series of securities which I received.

Q. From whom? A. From Mr. Bird on the 29th or 30th.

MR. LASKEY: If the Court please, I offer that in evidence.

MR. LEEMAN: I object to that, Your Honor, because the original is in the record.

THE COURT: No, that is a photostat also.

MR. LEEMAN: Well, we have a photostat copy of it in the record and I think the record speaks for itself. I don't think that this is necessary, it clutters up the record, if we have it in the record, it is before the jury.

334 THE COURT: No, this record isn't before the jury, not the Court's file.

MR. LEEMAN: The Court's file, but my understanding is that anything that is pertinent in that record, that the attention of the jury can be directed to it.

THE COURT: That isn't my understanding.

MR. LEEMAN: I may be wrong.

THE COURT: The only thing before the jury is the evidence they receive in open Court. They don't take the file to the jury room with them.

MR. LEEMAN: Well, I ask that the paper that is used be the one that has been filed in the record of this Court, rather than this copy.

THE COURT: Overruled. It will be received in evidence.

(The documents above-referred to, heretofore marked Plaintiff's Exhibit Numbers 6-A and 6-B were received in evidence.)

THE COURT: You may read it to the jury, Mr. Laskey.

MR. LASKEY: Plaintiff's Exhibit 6-B:

338 "Perpetual Building and Loan, 99-194; 5,63139." And there is an item I can't make out. Then there is an item that has no extension. "Celanese, 1-103/200, figure 4.50."

Beneath that are figures 24,267.22, and beneath that is 28,000.

The bottom of the page there appears box 6207, American Security and Trust Company."

BY MR. LASKEY:

Q. Mr. Sullivan, did there come a time when, in company with Mr. Bird and perhaps some others, you went to a safe deposit box?

MR. LEEMAN: I object, Your Honor.

THE COURT: Overruled.

BY MR. LASKEY:

Q. When was the first time, assuming that there was more than one, that you went to a safe deposit box anywhere in the city of Washington in connection with this estate? A. Going back four years, I am not sure.

It appears to me in my recollection is that after we proved the will and had published against unknown heirs, it was sometime in

339 March or early April, and on this occasion accompanied with a person from the Register of Wills, and also in company with a person

from the D.C. Inheritance Tax Division, Mr. Bird and I and Mr. Keith, went to the American Security and Trust and opened the box.

Q. Can you tell us to the best of your recollection whether you, in company with Mr. Bird, had been to a safe deposit box anywhere in the city of Washington before making the inventory which has been read as 6-B? A. I have not been to any safe deposit box with Mr. Bird while making that inventory, no, sir.

Q. Did there come a time, Mr. Sullivan, when you, in company with Mr. Bird, went to Mrs. McCord's apartment -- I mean Mrs. McCord's house? A. Yes, there did.

Q. And do you know about when that was? A. A very dreary day, I believe it was January the 6th. It was either a Thursday or a Friday afternoon. It was misting, almost raining; wet.

Q. And had you made an appointment before going there? A. I had made a telephone call, I believe, the day before, and Mrs. McCord had company or ladies in for cards or something, and she requested
340 and it was made for, I believe, four o'clock the following day.

Q. And did you tell her why you wanted to come?

* * * * *

THE WITNESS: I told Mrs. McCord that I wished to pick up from her certain jewelry and property belonging to this estate.

BY MR. LASKEY:

Q. And on the day following the call, did you go in company with anyone? A. I did, sir. Mr. Bird and I, in a silly little foreign automobile that I drove at that time, went out to her home.

Q. And were you admitted to the home? A. Yes, we were, very graciously.

Q. And will you tell us what transpired? A. Well, it was a very beautiful home, lavishly furnished. We entered. We were seated in the living room. I believe, as I recall, we both had on overshoes or other
341 rain attire, and our coats were removed from us by Mrs. McCord and our rubbers remained in the door. We went in and we sat down in the living room, and some pleasantries transpired between Mrs. McCord

and Mr. Bird. I was just a spectator at this point. Mrs. McCord's mother visited us in the room. We had a discussion about some piece of furniture there, a rather antique desk. Mrs. McCord left the room and returned with a leather or leatherette type of article, that could be a purse, and certainly would not be a wallet a man would use, or perhaps a lady would use inside of her thing; this, plus a little piece of cloth bag, in the nature of a Bull Durham sack in which tobacco used to be packaged, although it was perhaps a little better fabric, linen, I don't know. And this contained a safety pin, rather large, perhaps like you use on a diaper, and this safety pin had certain jewelry on it, there was some little money, I don't know, \$20.00 or something, and there was some other discussions about money.

Q. What was done to those items? A. Those items plus a grotesque picture of a lion, departed with us. I had the valuable items, and Mr. Bird was clutching the lion photograph.

342 Q. Showing you what has been, what has been identified as Plaintiff's Exhibit 4, I ask you if you recognize that document? A. Yes, that is half of a medical release that I had in my briefcase. I prepared it twice. One copy of this receipt was given to Mrs. McCord and one copy I retained and I believe Mr. Bird now has. These are the items also I received as best I could in my unskilled evaluation of what this jewelry was. I didn't know. Still don't know.

Q. Was there anything said at that time with respect to there being any items of jewelry that were not produced? A. There was some discussion about \$130 which apparently was other money that Mrs. McCord had received from the decedent and Mr. Bird made it known very clearly that he thought this was meager compensation for the many gallons of petroleum that Mrs. McCord had used in running errands for the decedent, and this was to be it. So far as I knew, this jewelry, plus the \$130, plus this lion photograph, and some minor jewelry which was explained to me was an unimportant silver plate. I presume they were things that lady would accumulate. I didn't see the other things.

343 Q. Do you recall while you were there at Mrs. McCord's house whether or not there was any suggestion or question by her as to whether or not you wanted to see the chest at that time? A. There was a discussion about a chest and the contents, as linens, and so forth.

I don't recall that, sir, it has been too long.

Q. You don't recall the detail of it except it was mentioned?

A. It was discussed between she and Mr. Bird. It was nothing that was brought to my attention.

Mr. Bird was very pointed that I should get these items and I took these home with me and the next day took them to the office.

Q. Now, did there come a later time at your office where there was a further discussion between Mr. Bird and Mrs. McCord and I believe also Mr. Keith was present? A. Yes, there did.

Q. How did that meeting come about? A. Because of the urgings and the insistence of Mr. Bird, a phone call was made and Mrs. McCord was invited down to the office. I am not sure whether he made the call or I made the call.

344 This was supposedly to uncover some additional assets of great value belonging to the decedent.

Q. And as a result of that was there a meeting had? A. As a result of that, Mrs. McCord did visit my office, yes, sir.

Q. Will you tell us what transpired on that occasion? A. Well, on that occasion I, because I felt that I had been retained, endeavored to lead the conversation and to politely inquire of Mrs. McCord about any additional assets and about some matters, and I found Mrs. McCord to be apparently helpful. I mean, she tried to tell me about certain things.

I was leading the conversation as best I could. It was a delicate subject, and I thought it best to handle it in that manner.

Now, Mr. Bird did not seem to agree and he took off, and the accusation was made that Mrs. McCord was guilty of some crime in acquiring some of this property.

I was embarrassed, Mrs. McCord was in tears, and she quickly departed. Of course it broke up the scene. I was just as glad she had departed at that time.

345 Q. Up to the time that Mr. Bird took over and became accusatory, Mrs. McCord was cooperating with you? A. She was responding to the questions and telling us what -- responding to the questions we put to her.

Now at this point she did not tell us about having certain bonds that we found out about, but she did at least respond to the questions, and I presume truthfully, I really don't know.

Q. There was nothing that was asked her that she refused to answer up to the time that Mr. Bird started his accusatory conduct? A. No, no, her conduct was very much of a lady and she was being polite and courteous and assisting as it appeared to me.

Q. What was the subject of Mr. Bird's accusation? A. Mr. Bird got off the deep end over some supposedly very valuable rings, multiple rings, or 3-stone diamonds and so forth. Mrs. McCord had some jewelry that Mrs. Jeffords had given to her long years ago. And there was some discussion about that and then all of a sudden Mr. Bird began to accuse her as though she had stolen it, and became very emphatic, pointed a finger at her, and the lady broke down, that is all. She just got in tears.

* * * * *

512

CROSS EXAMINATION

BY MR. LEEMAN:

Q. Mr. Sullivan, was there an order in court authorizing you to sell these stocks before they were turned over to Hemphill-Noyes, do you recall? A. My recollection, sir, is that there was but it is three years ago and lots of things have happened since then.

Q. So these certificates of stock that we are talking about that are involved in this case were delivered by you to Hemphill-Noyes before that injunction was issued; is that correct? A. They were delivered by
513 me and Mr. Bird together.

Q. And they were delivered to Hemphill-Noyes before the injunction was issued? A. My recollection is yes, sir, but I mean I would stand subject to correction because I don't -- I mean, I am not positive of it.

I believe it was several months before the injunction if I am correct.

Q. And at that time they were delivered so that they would be carried on what is known as a "street"? A. Street name. To facilitate the transfer. Because sometimes these certificates are difficult to transfer because of the registered agent's problems, tax clearance, and one thing and another, from an estate to the ultimate purchaser.

Q. You have no recollection of ever notifying Hemphill-Noyes of the issuance of this injunction? A. I have none, no.

Q. Well, you are familiar with the injunction, the wording of that injunction? A. Yes, sir. I have taken this order and read it word for word several times. I have seen it, and I have made copies or had copies of it made for Mr. Bird.

514 Q. Now, this isn't connected with that but, subject to that you issued an attachment against Hemphill-Noyes for these securities, didn't you? A. In the judgment rendered in my behalf against Mr. Bird for fee, yes; I issued an attachment and hoped to unleash the funds and cause them to be paid.

Q. Well, you knew they were under an injunction at that time, didn't you? A. Yes, sir.

MR. LEEMAN: That is all, Your Honor.

REDIRECT EXAMINATION

BY MR. LASKEY:

Q. Mr. Sullivan, I show you Plaintiff's Exhibit 6-A for identification, which you have previously identified, and I call your attention to the date January 9, 1961. That was when you supplied Mr. Gray and filed with the Court the inventory which is now numbered 6-B. That inventory is undated, but that is the date that inventory was made available, and as to which the specific subject of this complaint was identified; is that not correct?

The securities which are the specific subject of this complaint.

THE COURT: He is referring, I think, to this Exhibit 6?

515 A. Yes; this Exhibit 6. Yes; I made this available pursuant to court order, having revisited the matter because I felt that it was privileged, and once the court orders it, why, this overrules my

discretion in the matter and I have no further discretion. So I made it available.

BY MR. LASKEY:

Q. At that time, that is, January 9, 1961, were those securities contained on the list in Exhibit B the certificate numbers still in the safe deposit box in the American Security and Trust Company? A. I really don't know, sir.

Q. There was only one delivery of all securities to Hemphill-Noyes? A. To my knowledge, there was. There was one transferred to the Treasury Department, to certain "E" and "H" Bond referred to. There was one delivery to Hemphill-Noyes, and then there were a couple other bonds which were paid off because they expired.

Q. And you do not in your records now have the receipts for those deliveries? A. No, sir. I thought those receipts were returned to Mr. Bird when he and Mr. Leeman visited my office.

516 MR. LASKEY: I called for them some time ago.

THE COURT: He said he would look for them during the lunch hour.

MR. LASKEY: That is all I have, Mr. Sullivan.

THE WITNESS: Thank you.

MR. LASKEY: Except I will offer, out of the presence of the jury, for the purpose of the Court's consideration, Exhibit 6-A for identification, to fix the date of that inventory.

THE COURT: Very well; it will be received.

(The document referred to, heretofore Plaintiff's Exhibit 6-A for identification, was received in evidence.)

MR. LEEMAN: What was that?

THE COURT: He has offered that letter for the purpose of the date of the inventory, but I thought he said he made the inventory in January, or December 29 or 30, when Mr. Bird came to him.

MR. LASKEY: Yes. I beg your pardon, and I should have phrased that -- as the date of -- that the specific subject of this litigation was made known, because that will be my statement, because there was a lis pendens and there would be no right to transfer irrespective of the injunction.

517 MR. LEEMAN: We are making it clear now that that inventory was not made on the 9th of January. Is that correct?

MR. LASKEY: That is correct.

MR. LEEMAN: This is a letter dated by Mr. Sullivan.

MR. LASKEY: The letter fixes the date by which the specific items which we claimed were identified. The inventory itself was made on December 29 or 30, according to Mr. Sullivan's testimony.

THE COURT: 1959.

MR. LASKEY: 1959; yes, Your Honor.

THE COURT: This letter was written 1961.

MR. LASKEY: Yes. Thank you, Your Honor.

MR. LEEMAN: This inventory was made when?

MR. LASKEY: According to Mr. Sullivan's testimony, it was made on December 29 or 30, 1959, in Mr. Bird's apartment.

Isn't that correct, Mr. Sullivan?

THE WITNESS: That is when the original, that is the yellow sheet-- that that is a copy of -- was made.

THE COURT: Mr. Sullivan, when did you withdraw from the case?

THE WITNESS: Well, Your Honor, starting in '62 Mr. Bird became more and more difficult, and along about March of '62, on a rather wet, 518 cold day, he insisted on getting a certain piece of evidence -- I believe that was the Michalka medical record -- in the safe deposit box.

On this date we walked back up on 15th Street and I said something to him, I said, "Jimmie" --

THE COURT: Don't go into that. I just want the date.

* * * * *

523

RECROSS EXAMINATION

BY MR. LEEMAN:

* * * * *

525 Q. Did you have occasion to go to Mrs. Jeffords' house with Mr. Bird and look over the papers that were there and other things? A. Yes; I was there several times, sir.

Q. And you looked around, examined things in the house?

A. Yes, sir; I was in that house several times during the winter of '59 and the spring of '60.

Q. Well, did you find any of these in the house?

THE COURT: By "any of these" you mean as referred to on Exhibit 6, isn't that right?

MR. LASKEY: 6-B.

THE WITNESS: Yes. May I see the exhibit?

(Handed to witness.)

THE WITNESS: No, sir; I had in mind -- I do recall specifically finding a certificate in the house in a chest in the bedroom of the decedent. In going through this we found assorted papers, receipts, stock accounts and so forth, and there was a certificate of Fort Dodge; a certificate -- it is a bond. There was extensive correspondence attached to the concerning receivership, I believe a bankruptcy receivership in
526 Indiana, Ohio, or somewhere out there, and the ultimate conclusion that the bond was worthless. This did not bear fruit because we later found it had some minor value.

This was the certificate I remember. This is not on here, however.

BY MR. LEEMAN:

Q. Is that the only one that you recall that you found at the house?

A. The only certificate; yes, sir.

Q. Mr. Sullivan, was a couple of suitcases like that full of papers that you did get from Mrs. Jeffords' house (indicating). A. I have seen those junky suitcases and contents similar to what I see from here; yes, sir.

Q. And they were filled with papers when you took them away?

A. Yes; those were lugged from Mrs. Jeffords' house down to my office in the Shoreham Building and I later saw you and Mr. Bird and Mr. Keith lug them from my office to some other point. Where, I know not.

Q. Those papers were not at Mr. Bird's apartment house when you looked at the papers there? A. Those papers were for a great portion removed from the decedent's bedroom and a shifforobe, or a piece of

527 furniture in the dining room, where, from which she apparently did most of her correspondence and work.

Q. Now, how big a package of papers did you remove from Mr. Bird's apartment on the occasion when you were there? With your hands can you indicate the size? A. Behind your valise on the desk is a reddish manila type envelope.

An envelope of that size; letter size; not legal; which expanded about ten inches -- in other words, it was quite fat, and it had a red string around it, and this was full of all sorts of old debris, old bills, tax bills, dental bills, all kinds of appointments for doctors, miscellaneous assortment of junk, for the greater portion, including amongst which were the certificates that are listed, the building and loan accounts listed and so forth.

This thing was upside down emptied on to a dinette table and then resorted back into it.

Q. Do I understand that these at the top of this list, you remember that you got those from Mr. Bird's apartment at that time? A. I got everything there, sir.

Now, the particular item, sir, that you have your finger on here, which is marked "American Security and Trust", "Amsec and Trust

528 Company", is a receipt for the \$5,000 in bonds.

The bonds themselves were not there. The letter says so, sir. The bonds were later acquired from the American Security and Trust which institution had bought these at the request, by Mrs. Jeffords. The only thing we had was a notation that they had.

Q. But these entries here were stocks? A. They were actual stock certificates; yes, sir.

Q. And your testimony is that you got them from Mr. Bird's apartment? A. Yes, sir.

THE COURT: On the 29th or 30th of December 1959?

THE WITNESS: Yes, sir.

Now, Your Honor, the Baycoat note was not there, but there were receipts indicating that the note was being collected by the bank.

This is merely a memorandum that there was a Baycoat note at the American Security, to find out about it, because I didn't know what it was at this point.

MR. LASKEY: I will have no questions, Your Honor.

THE WITNESS: There seems to be some question as to how I handled the restraining order.

I would like, Your Honor, to see the sheet on the first account which sets up how the restraining order was handled.

THE COURT: That will be for counsel to take up. They will bring it out if they think it is necessary.

(Witness left the stand.)

* * * * *

458

JEROME KEITH

was called as a witness and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LASKEY:

Q. Your full name is Jerome S. Keith, is it? A. Jerome Keith.

Q. Jerome Keith. No middle initial? A. That is right.

Q. And you are one of the executors of the estate of Laura Jeffords?

A. Yes.

Q. And a defendant in this suit.

Were you, Mr. Keith, familiar with the injunctive order of this Court of April 14, 1961? A. I would like to make a statement.

THE COURT: Answer the question, please, then you can explain your answer if necessary.

459 THE WITNESS: I --

THE COURT: The question is whether you were familiar with the injunctive order?

THE WITNESS: Yes.

THE COURT: Now you can make any explanation you want now.

MR. LASKEY: Go ahead and make your explanation, sir.

THE WITNESS: I know nothing about the law. It is the first time I have ever been in the Court in a case. I live in another part of the country, and, after 1958, I had a stroke which invalidated me to a certain extent. Then when Mrs. Jeffords, my aunt, died, Mr. Bird and Mr. Sullivan and I talked about the case. I was a co-executor. They suggested and agreed, if I cared to, because of the hardship of coming down here and the possibility that I wouldn't be able to come down at times on account of my health, they wanted to know if I wanted to withdraw as an executor.

I talked this over with my wife and we decided that this was what Aunt Laura, Mrs. Jeffords, wanted, for me to be a co-executor, so I decided to stay in and do the best I could.

460 It was understood that it was to be handled entirely by the lawyer, and Mr. Bird. I would come down whenever they needed me and do whatever I could.

I just wanted to say that because you asked me that question about the injunction. I imagine I was but I couldn't tell you anything about it right now, what it said or anything about it.

BY MR. LASKEY:

Q. If I understand you correctly, you left the active management of the estate to Mr. Bird and the attorney for the estate? A. That is right, and I appeared when they needed me to sign papers, and that is about all.

Q. And you were not present in Court at any time the injunctive order was entered by Judge Walsh? A. No.

Q. And you were not, as I understand you, even in the city at that time? A. Right.

MR. LASKEY: That is all I have, Your Honor. Any cross?

MR. LEEMAN: I have no questions, Your Honor.

* * * * *

865

JEROME KEITH

was called as a witness, and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LEEMAN:

Q. Now, for the court and jury, will you give us your full name, Mr. Keith? A. Jerome Keith.

Q. How old are you, Mr. Keith? A. 70 years old.

Q. Where do you live? A. Riverside, Connecticut. That is in Greenwich, Connecticut.

866 Q. Do you have a street number? A. 24 Chapel Lane, Riverside. It is a part of Greenwich.

Q. Now, Mr. Keith, you knew Mrs. Laura L. Jeffords in her lifetime? A. I knew her for seventy years.

Q. By the way, Mr. Keith, have you ever had occasion to go to court before, either as a witness or a party? A. Never before other than here.

Q. This is your first experience in the courtroom? A. My first experience as a witness and my first experience in a trial, and my first experience in a court room, a jury -- a jury court room.

Q. Are you any relation to Mrs. Jeffords, Mr. Keith? A. She was always my "Aunt Laura" for seventy years. Now, if I had to prove what relation it was, I never looked it up, never cared. She and my mother were girls together and I assumed there was some relationship between my mother and Mrs. Jeffords.

Q. But you are unable to say whether or not you were a blood relative of hers. A. Never looked it up; didn't care.

Q. Did you have frequent contact with Mrs. Jeffords? A. Many of them.

867 Q. And what were those contacts? A. Well, there was hardly a year went by that she was not out at our home, or homes, as kids -- that is when we were young. And that went on all through the years until I

became married and had my family, and she then visited us, and we made many, many visits down here at her home.

Q. So that over the years your relation had been very close?

A. Very close.

Q. And the relation of your family with Mrs. Jeffords? A. Very close.

Q. Now, Mr. Keith, when did you first learn of Mrs. Jeffords' last illness? A. I learned it in October, just after she had it. They called me at home, this here last -- what we thought was a stroke. That is the first I knew of her illness. It was in October some time; I couldn't tell you exactly when; and somebody, I think Mr. Bird, called me at my home in Riverside.

Q. And did you at that time visit Mrs. Jeffords? A. I came down on the next plane.

Q. Did you see her at that time? A. I did.

Q. What was her condition? A. She was of course in bed. She
868 was very feeble and I -- when I went in they told me -- there were three or four or five nurses there; I assume were nurses; and said she couldn't be seen; and I said "Well, please tell her that Jerome Keith is here", and somebody came down; it may have been Mrs. McCord; I don't know; and said that she wanted to see me.

I went up there and she was in very low condition; I mean by that she was -- she couldn't move her hand. Like, having had a stroke myself just a year before, I knew what she was going through, so I simply whispered to her that I was here and I was going to do everything I could for her and that she was well taken care of; and I then -- I asked her if she knew me, and then I went out. That is all I saw of her.

Q. Now, when did you next see her? A. In the funeral home at Hines.

Because then -- that was in October, and then they called me, Mr. Bird called me on Christmas Day.

I was home. He told me of her death and told me that the service would be Monday. I came down on Monday.

Q. Well, was it your conclusion after seeing her that her condition was such that further business from you would be of no benefit to her?

MR. LASKEY: If the Court please, I object to that.

869 THE COURT: It is a leading question. I sustain the objection.

MR. LEEMAN: I will ask it this way, Your Honor.

BY MR. LEEMAN:

Q. Did you have any reason for not visiting her again before her death?

MR. LASKEY: If the Court please, object to that as being immaterial.

THE COURT: Sustained.

BY MR. LEEMAN:

Q. Now, Mr. Keith, when did you first learn that you were named as an executor in the will of Mrs. Jeffords? A. You want me to tell you the situation as it was.

Q. When did you first learn of it? A. In 19 -- I think it was in 1957, when she came out to Riverside to visit my family.

MR. LASKEY: Please identify the time, if the Court please.

THE COURT: What did you say?

MR. LEEMAN: What was your objection?

MR. LASKEY: I withdraw it. I didn't mean it as an objection. I thought the witness was going on and I wanted to interrupt.

870 BY MR. LEEMAN:

Q. You first learned of it some time in 1957? A. When she came out; she wrote us and said she was going to be at Riverside, come to Riverside at a certain time, a certain day, and which she did.

I met her at the train and she got in my car and said "Let's stay here a moment before " -- I was alone; my family was not with me. She said "I want to talk to you."

She said "This is my last visit" -- no; she said, "This is my last trip", and I said, "No; why is that?" I said, "You are going to make lots of trips.

She said "This is my last trip I am ever going to make", and she said "I had something I wanted to tell you about."

And at that time she said she had made me an executor with a Mr. Bird, who was a tried and trusted friend and had been her friend and her lawyer and had been Mrs. Jeffords' friend and lawyer for many years; and she said she wanted me to work with him; and she said she wanted me on my next visit to Washington to meet him, to get to know him.

And I kind of put it off. I said, "You are going to make many more trips after this". That is the first time I knew anything about it.

Q. Had you met Mr. Bird at that time? A. No, I had not.

871 Q. And when did you first meet Mr. Bird? A. I think the first time I met Mr. Bird -- well, I met him -- I was down here in September of 1959 with my daughter. She drove me down.

We stayed at Mrs. Jeffords for I think one night and one day. And at that time she called Mr. Bird by phone -- no; she gave his number; I called him; and introduced myself over the phone and told him I was going to be there just a short time but the next time I was down I hoped to meet him.

That was my first meeting with him -- not face to face; it was just over the phone.

Then I -- when I came down in October, when he notified me of her sickness; that is the first time I had met Mr. Bird. I met him then for just a few minutes, or he -- I think he went up to the room with me. I told her at the time, I said, "Mr. Bird is here at my side and everything is going to be all right."

Q. Now, Mr. Keith, when you came down to visit Mrs. Jeffords in September, what did you do at that time? A. Well, we just talked; that is about all; but one thing has stood out in my mind about that trip --

872 MR. LASKEY: If the Court please, I object to this as not being responsive. He asked him what he did.

THE WITNESS: All right; we just talked and did what you do when you are visiting.

BY MR. LEEMAN:

Q. Will you state whether or not you and Mrs. Jeffords went out at any time? A. We did.

Q. Where did you go? A. She insisted on taking Carol, my daughter, and myself to the Park Sheraton for dinner.

Q. And where is that located with respect to her home? A. Right across the street.

Q. How did you get over there -- or how did Mrs. Jeffords get over there? A. She got over there under the guidance of my daughter and myself.

Q. Will you state whether or not she needed assistance? A. She did. She couldn't have done it alone.

Q. Now what did you do, if anything, to assist Mrs. Jeffords during the meeting? A. Well, of course her eyes -- she couldn't see; and that was one of the reasons she said when she came out to Riverside that it would be her last trip, because she said she was going blind.

873 So we helped -- in September when Carol and I helped her over there and helped her down the stairs into a dining room where she apparently was well known, they gave her a table where she had formerly eaten many times, and we read the menu to her and she ordered what she wanted, and when it came we prepared it, cut it, and put it in front of her and told her just where it was.

THE COURT: We'll take a five-minute recess.

(Short recess taken.)

THE COURT: All right, Mr. Leeman; you may proceed.

BY MR. LEEMAN:

Q. Mr. Keith, when we took the recess you were telling of the dinner that you went over to the Sheraton Park with Mrs. Jeffords. Had you finished with that? A. No. We finished dinner and escorted her home, and she was much -- I mean almost, as far as I could see, was absolutely blind. And I was very much surprised because it was the first time I had seen her in that condition. And when this witness got up here and said that she could see the dimples in her cheek, I couldn't understand how that could be possible.

MR. LASKEY: If the Court please, I object to that as argumentative and not responsive.

874 THE COURT: I sustain the objection.

BY MR. LEEMAN:

Q. Now, Mr. Keith, do you recall an occasion when you and Mr. Bird were in Mr. Sullivan's office and Mrs. McCord came into that meeting? A. Yes, I was there.

Q. What do you recall of what occurred at that meeting? A. I might preface that by saying --

MR. LASKEY: If the Court please, I don't think this is responsive.

THE COURT: I sustain the objection.

Answer the question.

BY MR. LEEMAN:

Q. Tell exactly what occurred, Mr. Keith. A. If I remember correctly I was surprised when she walked in because I don't think we expected her, I don't know, I didn't know about it. But she came in and the three of us sat there, and Mr. Sullivan explained that Mr. Bird and myself were making every effort we could to handle the estate properly and that many things, we had found many things that we felt were missing that we had heard or that Mr. Bird heard through rumors, and things I guess he had seen that weren't there that he couldn't list as assets --

875 MR. LASKEY: If the Court please, the witness used the term "guess". I don't think we should guess about things.

THE COURT: No. Just give your best recollection.

THE WITNESS: And Mr. Sullivan gave Mrs. McCord to understand that we were simply trying to do our job and felt that as she was considered a trusted friend and good friend of Mrs. Jeffords that she would be interested in helping us do that.

And it was in that light that I think they did, I know I sat there and listened to the questions that were asked.

And I might say that there was nothing ungentlemanly about any of the questions; there was no rudeness whatsoever; and I was very much surprised when Mrs. McCord --

MR. LASKEY: I object to the witness volunteering as to being surprised.

THE COURT: I sustain the objection.

BY MR. LEEMAN:

Q. Do you recall whether or not Mr. Bird asked Mrs. McCord any questions? A. I think we both asked. I mean, here and there we might have asked some questions but I couldn't recall any that he did and I couldn't swear that he did or that he didn't.

876 I think we both asked, in the course of the hour or so that it was going on, I think we might have. I don't know.

Q. Who did the chief questioning of her? A. Mr. Sullivan did the whole thing. It was at his suggestion that we got her down there.

Q. It was at his suggestion? A. It was.

Q. Now, Mr. Keith, could you state whether or not Mrs. McCord was crying when she left that meeting? A. Not to my knowledge. She was -- she left in a huff, but I don't think -- I don't know. I wouldn't think she was crying but I couldn't -- I wouldn't say.

Q. Did she appear to be upset? A. Yes; and I couldn't see why, because there was nothing --

MR. LASKEY: I object to the voluntary statement.

THE COURT: Sustained.

BY MR. LEEMAN:

Q. Now Mr. Keith, after the death of Mrs. Jeffords, when did you next see Mr. Bird? A. I came down to the funeral service on Monday. That was the 20 -- well, a day or two after Christmas.

877 Q. Did you and Mr. Bird do anything on that day? A. I saw him at the funeral home; he was there; and we talked for a moment; and he told me that he had seen her will, and just told me -- then, in the room there he didn't say much, but he did say "I am going away tonight", and I said "Well, I am going back tonight, too", and he said, "I thought you might like to see the house; it is the last time you will see it as in the shape it is now; the way you knew it."

I said "I would like very much to just, to just see".

So we went up after the service. We took a taxi and we went in, and he showed me around the house just as it was, and it was just the way I had remembered it, except that her bedroom door was locked; and he unlocked the door and we went in there, and to me that was the same as it was.

He said, "Now, everything is just the same except a cedar chest that was there is not here."

He said, "It is a chest that she kept her personal papers and things that were very close to her; personal things, the things that she wanted no one else to see; and she was afraid they might because there were so many nurses" --

MR. LASKEY: I object to any further conversation between Mr. Bird and the witness.

THE COURT: Sustained.

THE WITNESS: What?

878 THE COURT: I have sustained the objection. That is inadmissible, the conversations between you and Mr. Bird.

BY MR. LEEMAN:

Q. Any conversation between --

MR. LASKEY: The objection has been made and sustained and there is no question pending.

MR. LEEMAN: If Your Honor please, on that objection, Mr. Bird is here in the courtroom, and he is quoting statements of a witness who is present, and I believe that is admissible.

MR. LASKEY: If the Court please, I believe Your Honor has ruled and I don't think we ought to reargue this question.

THE COURT: Yes. I stand by my ruling.

MR. LEEMAN: You stand by your ruling?

THE COURT: Yes.

THE WITNESS: There is one thing I would like to say.

THE COURT: No; no; you can't volunteer statements.

BY MR. LEEMAN:

Q. Can you tell us whether or not your daughter ever went on any trips with Mrs. Jeffords? A. Yes. My mother died when my daughter

was 14 years old, and she came down here and lived with Mrs. Jeffords. Mrs. Jeffords took care of her and raised her for a few years. She

879 went to school here and Mrs. Jeffords, she was under Mrs. Jeffords' care for a number of years, and they took a number of trips during that time.

Q. And did you have a sister that visited Mrs. Jeffords? Did you hear my question? A. Yes. I am trying to think.

Now, I didn't have -- I had a sister-in-law that visited. That was my son's wife. He visited. He lives in Chambersburg and they came up here quite often.

Q. Well, did you have a sister? A. Yes, I had a sister -- oh, you asked me about my daughter; I am sorry.

Q. I asked you about your daughter first.

She is the one that lived with Mrs. -- A. That was my sister.

Q. Oh; your sister lived with her? A. My younger sister. My mother died and she took my younger sister.

I had a daughter, Carol, who was here with me on my visit in September -- the daughter.

Q. If you want to correct that, it was your sister that lived with Mrs. Jeffords? A. My sister, Dorothy, who lived with Aunt Laura. I

880 mean she raised her for three or four years, and she was the one who lived in California and was in the will, who had a bequest in the will. That was my sister.

Q. Is she living at this time? A. She died about two weeks ago in California.

Q. Now you say your daughter visited Mrs. Jeffords too? A. She brought me down in September; and she was with us that day or part of a day that we were here.

MR. LEEMAN: I think that is all. You may inquire.

CROSS EXAMINATION

BY MR. LASKEY:

Q. Mr. Keith, did I understand you correctly that this trip you made to Mrs. Jeffords' house after Mrs. Jeffords' death, was after the funeral? A. After the funeral.

Q. Right after the funeral? A. It was in the Monday afternoon. I couldn't tell you exactly when. I left and caught a plane around eight or nine o'clock back to New York.

Q. Did you go back by plane or by train? A. By plane.

881 Q. You had known your Aunt Laura over the 70-year period that you testified about on direct examination? You had known her well, had seen her frequently? A. I testified I saw her maybe a thousand times in this 70 years.

Q. On any of those thousand times did you ever see her have a three-stone diamond ring? A. I don't know. I didn't notice those things and I don't know a thing about them. It would be a pure guess if I said anything.

Q. You never saw one; you have no recollection of ever having seen one? A. I have no recollection of any jewelry she had. I was not interested in it and therefore didn't notice any.

Q. To your knowledge you never saw one? A. Right.

Q. You yourself suffered a stroke, did you not? A. I did.

Q. And you made a good recovery from it, did you not? A. Very, very good.

Q. But at one time that left you affected? A. What?

Q. I say, at one time it left you affected? A. As I am right now.

882 Q. But it was more severe and you recovered? A. Yes.

Q. On the occasion of this dinner what time of the day was that that you went to the Park Sheraton for dinner? A. In the evening.

Q. And that was in September of 1959, as I understand? A. Yes.

Q. And it was Mrs. Jeffords' idea that you go to dinner? A. Yes.

Q. And you had dinner? A. Yes.

Q. And to your knowledge she was well known at the Park Sheraton and appeared to be a frequent customer? A. Yes.

Q. Now there was a time, was there not, sometime after Mrs. Jeffords' death that Mr. Bird suggested that you withdraw as co-executor; is that correct? A. I don't know if he suggested it or if I suggested it. It was a matter of conversation among Sullivan and Mr. Bird and myself.

Q. Didn't you testify here out of the presence of the jury earlier either last week or this week -- last week, rather -- that Mr. Bird had suggested that you withdraw as co-executor -- A. It may have

883 been --

Q. Just let me finish my question. A. Yes.

Q. I am asking you if you didn't testify last week while the jury was out, that Mr. Bird had suggested that you withdraw as co-executor, that you went home and thought it over, talked with your wife about it, and decided not to? A. Words to that effect, yes.

MR. LASKEY: Thank you; that is all I have, Your Honor.

THE COURT: Stand down. Take a seat by your counsel.

MR. LEEMAN: Just a minute. Your Honor, might I have another question?

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. LEEMAN:

Q. Mr. Keith, after the death of Mrs. Jeffords, did you visit the home of Mrs. Jeffords in the company of Mr. Bird and Mr. Sullivan?

A. Yes. Several times.

Q. How long was that after her death? A. I wouldn't know exactly but I think it was, I would say within a week or so after, I came down

884 here again and they wanted me to be with them when they went through the papers and things for the records, and the three of us went to 2707 Woodley and made a thorough examination, and at that time, at Mr. Sullivan's suggestion, we looked under the rugs and behind the curtains, and behind the pictures, and up in the attic and down in the cellar because there were many things that he and Mr. Bird felt should be around and they wanted to be sure that they weren't some place that we had overlooked.

Q. So you made a thorough search of the house? A. One of those kind you read about in stories -- to me it was.

Q. And how many times did you visit the house? A. I think we went up there -- I couldn't swear, but I would say three or four times

I went up there. I was up there one time with the appraisers and I was up there several times with Mr. Bird and Mr. Sullivan, checking things over, before we took everything down to his office of importance.

MR. LEEMAN: That is all.

* * * *

355 MR. LASKEY: Mr. Bird, will you take the stand?

THE COURT: Mr. Laskey, are you calling him under the adverse witness rule?

MR. LASKEY: Yes, Your Honor, and I invoke the privileges of that rule.

THE COURT: I just wanted to make the record clear.

Whereupon,

JAMES F. BIRD

was called as a witness by and on behalf of the plaintiff and, having been first duly sworn, was examined and testified as follows:

* * * *

356 DIRECT EXAMINATION

BY MR. LASKEY:

Q. Mr. Bird, your name is James F. Bird, and you are one of the defendants as co-executor in this case? A. That is right.

Q. And you are a member of the Bar of this Court, Mr. Bird?
A. That is right.

Q. Are you in active practice now? A. No.

357 Q. When did you retire from the active practice? A. When I was 65.

Q. What is your present address, Mr. Bird? A. 2707 Woodley Road.

Q. Is that the house formerly occupied by Mrs. Jeffords? A. That is correct.

Q. Is Sarah Eldridge Gill still alive, to your knowledge? A. I really don't know. I heard that she was in town about a month ago and phoned some neighbors.

Q. Is Sarah Eldridge Gill, to whom I refer, the person who was designated in Mrs. Jeffords' will as, "to have the use of my house for her lifetime, including all furnishings except what has hereinafter been bequeathed or who may hold a bill of sale"? A. Yes.

Q. Did you purchase Mrs. Gill's interest? A. Mr. Keith and I did.

Q. Are you occupying the house as owner or tenant? A. Owner, subject to a mortgage, a very substantial mortgage, we live there.

358 Q. You purchased it from Mr. Keith? A. I purchased Mr. Keith's half-interest in the house and in the furnishings.

Q. Did Mrs. Gill ever occupy the house after Laura Jeffords' death? A. I believe not, as an occupant. She was there for quite a little while. She was moving before Mrs. Jeffords died.

Q. Mr. Bird, had you known Tracy L. Jeffords, Mrs. Jeffords' husband, during his life time? A. Yes.

Q. Over what period of time? A. Well, I can't remember back how far but he was a landmark here when I came to town, and I got personally acquainted with him along about '38 or '39.

Q. Did you have occasion to represent Mrs. Jeffords during her lifetime? A. Oh, yes.

Q. Now, directing your attention to the fall of 1959, did you have any professional association with Mrs. Jeffords during that period? A. Yes.

359 Q. How did that come about? A. Well, I was at her call, so to speak. I had been representing her and she asked me to keep in close touch with her. I saw her every Saturday afternoon, practically every Saturday afternoon.

Q. Did there come a time when Mrs. Jeffords became ill? A. Several times.

Q. Well, with specific reference to October of 1959? A. Yes.

Q. And did you see her during the period following the onset of that illness? A. Yes.

Q. How frequently? A. Oh, substantially every day. I came over there on Monday, the 12th; had two telephone calls from a roomer over there who said it was urgent. October 12, it was a Monday, I believe.

MR. LASKEY: That is correct by this calendar I have here.

BY MR. LASKEY:

360 Q. And you went? A. Yes, I went.

Q. And then you made frequent visits following that up until the time of her death? A. That is right, practically every day. I wouldn't say every day but there were a few interruptions or a few times it wasn't daily.

Q. Isn't it a fact Mr. Bird that Mrs. Jeffords' husband, Tracy L. Jeffords, did die on a Christmas Day? The year escapes me at the moment. A. 1949. He died ten years exactly to the day before his wife.

Q. Now, directing your attention to a period in December of 1959, what was Mrs. Jeffords' condition in the early part of that month?

A. Well, she was in very weak condition. She was using them little rubber balls to exercise her hands, trying to restore movements, as I recollect, and I don't have a -- I want to say I can't be exact on that.

Q. But you saw her and had conversations with her? A. Very limited conversations. She was unable to carry on any sustained conversations, or mental operations. She would fall asleep.

361 Q. Had you at one period during October obtained a power of attorney? A. Yes, I had. I didn't obtain it.

Q. I mean a power was given to you, wasn't it? A. Yes.

Q. Was that the power of attorney of October 19, on the form of the bank? A. There was one from the bank that was obtained.

Q. Was there another power of attorney? A. There was one prepared and it was prepared by Mrs. Jeffords, I am sure, and it was typed by Mr. Sifdol, who was a typist living in the house, he typed it. And I think a nurse there, named Rochambeau, assisted him.

I heard about it. Miss Rochambeau phoned me and said, "There has been a paper over here, power of attorney, prepared for you and written by Mr. Sifdol and I think you ought to know about it."

Now, I didn't see that paper personally until the 19th day, at the time the bank officials were there. Mrs. Jeffords had that and she said, "Why isn't this good enough?" That is the paper that she had prepared.

362 The terminology of it, at the beginning of it, it says, "I wish Mr. Bird" -- that is the way she started out, she didn't say, "I hereby appoint".

I had previously at her request prepared a power of attorney which she said was exactly what she wanted and I gave her the original and I never saw it, never heard about it, and didn't press her for it.

Q. On the 19th, the power on the bank form was executed, is that correct? A. Yes. The banks have their own forms, of course. They won't release any money except in accord with the statutory provisions.

Q. Did you function under the bank's power of attorney or the power of attorney on the bank's form alone or did you function under any other? A. I functioned alone.

Q. And for how long did you continue to function under the bank's form power of attorney? A. Until Mrs. Jeffords' death.

Q. As a lawyer, Mr. Bird, you know that if a person becomes incompetent, the power of attorney is revoked. Isn't that correct statement of the law, sir? A. That is correct as I understand it.

363 Q. You never considered, did you, that your power of attorney had been revoked? A. Well I, yes, I understood that.

Q. When? A. With Mrs. Jeffords' death.

Q. I see. That is the first time that you considered your power of attorney ended? A. Yes.

Q. Now directing your attention, Mr. Bird, to a Saturday, December the 19th, 1959, were you in Mrs. Jeffords' house on that day? A. I was.

Q. Was there on that day an incident which involved the removal of a cedar chest from the house? A. There was.

Q. Had you any knowledge of that cedar chest prior to that time? A. No, no specific knowledge. I believe I understood there were furnishings in the bedroom, and may have seen a cedar chest, and I know later from looking around, there had been two cedar chests there, and that there was a cedar chest there and it was taken out that day.

364 Q. And you saw it being taken out, did you not? A. That is right.

Q. Was it taken out by Mr. McCord and Mr. Collier, as they have testified? A. Well, Mr. Collier supplied the physical energy. I asked Mrs. McCord to take it to her house for safe keeping.

Q. Now, when did that conversation take place? A. The morning. The first I ever heard of the idea was the morning of the 19th.

Q. I understood you to say that you asked Mrs. McCord to take it to her house for safe keeping? A. That is correct.

Q. Now what do you mean by the statement that, "The first you heard about it"? A. Well, Mrs. McCord came down the steps in a very energetic manner. Sometimes she was exceedingly energetic, and I didn't know why.

THE COURT: This was December 19th?

THE WITNESS: This is the 19th.

She said, "Mr. Bird, Mrs. Jeffords has passed beyond the state of recovery. I think that cedar chest should be taken downstairs -- out of here -- protected, and I would like to take it to my house for safe keeping. Don't you think that is a good idea."

365 I said --

Q. Did you agree it was a good idea? A. I agreed it should be taken out of there, for reasons.

Q. Did you know what was in it? A. I did not. I understood -- Mrs. McCord had been talking to me about it and wondering what was in it and wondering if Mrs. Jeffords' diary wasn't in it, and the silverware, she said there was silverware in there she had heard, and as far as I knew, I didn't know, but it was a lot of gossip among the women as to what was in that cedar chest. Mrs. Jeffords is supposed to have a lot of diary and gossip items.

So I said I thought it would be a good idea. And her house was about two blocks away, and I understood she at that time had had the title cleared up, and she had just moved down there.

Q. What did the question of title have to do with taking the chest over there, Mr. Bird? A. Well, I wanted a safe place for it.

366 Q. Why did you feel it needed an extra specially safe place in view of the title of the house? A. It could have been taken to a storage house or warehouse or someplace like that.

Q. Did you suggest it be taken to a storage house or warehouse? A. No. It could have been, and had there been a good lot of room in the house, I would have stored it there. She had roomers, she had nurses, and there were, I wouldn't say how many keys outstanding -- maybe twenty.

Q. And that situation had obtained from time she first became ill until she died, had it not? A. Not exactly, no.

Q. There were rumors from time to time, were there not? A. Yes.

Q. And there were keys outstanding? A. There were keys outstanding.

Q. There were nurses? A. No, the nurses were coming and going.

Q. That is the situation you just referred to, sir? A. Well, there was a man over next door to Mrs. Jeffords in a room there, his name was Lagotta, she said she didn't trust him, he was Polish.

367 Q. Well, how long had he been there? A. Well, I think he had been there a long time. I disagreed with her strenuously. He had a high security job in the Government.

Q. Well, what situation had changed between October the 12, 1959, and December 19, 1959, that led you to believe that there should be a change in circumstances making it necessary to remove the chest at that time? A. Well, the house was going to have to be closed if Mrs. Jeffords died. As you well know, that when they die, the house is closed. There has to be a lapse there of --

Q. Excuse me.

You have just stated, "as I well know, that the house would have to be closed". On what do you base that? I don't well know that. A. Well, this -- there is nobody to manage the property, pay the utilities, to do anything about the house, to take care of it.

Q. Is it your experience that every time a person dies, the house is closed? A. Oh, no, not necessarily -- not absolutely. There are

368 exceptions. But in a case like this, where there is a lone widow and has an outstanding undebted status as to her estate.

Q. Did you know at that time that she had given a life interest in that house to Mrs. Gill? A. I did not.

Q. That would have changed the circumstances about closing the house, would it not? A. Well, I am not sure that it would.

Q. Does an executor take possession of the real property of the decedent, in your experience, Mr. Bird? A. No, I will tell you how -- you are asking --

Q. Would you answer my question? A. I would like to finish your first question first.

MR. LASKEY: I put a question, if the Court please, and I am entitled to an answer and then the witness may explain if he wishes.

THE COURT: He may answer and then if he has not fully answered, you may examine again.

Read back the question.

(Question read by the reporter:)

369 "Question. Does the executor take possession of the real property of the decedent, in your experience, Mr. Bird?" A. An executor might or might not, depending on his family status.

BY MR. LASKEY:

Q. Would an executor, under a situation where there had been a bequest, devise of the life interest, of a real estate to a life interest, would an executor take possession of the house under those circumstances? A. After the death, yes.

Q. After the death of the life tenant? A. Now you have to go back and read that. It is too fast for me.

(Question read back by the reporter.)

A. I still don't understand it.

Q. All right, let me put it this way.

In a situation where a decedent had real estate and left a will, in which will she devised a life interest in the real estate together with the furnishings and equipment in the house for life to a specific person,

under those circumstances, would the executor have any control over the house upon the death of the decedent? A. Well, he might have, at
 370 least until the will was found, until the woman died, or until the person died and the will was admitted to probate and the year for filing a caveat had expired.

There are a lots of possibilities there, Mr. Laskey.

Q. You had not been appointed executor until what date? A. I don't know. I have got the papers over there. It is in the file.

Q. Sometime in January of 1960? A. I don't know. It is on the record. I forget what day. It took quite a little while.

Q. Would you have had any authority to act in connection with the Jeffords estate until your appointment as executor? A. Well, I had a writing from Mrs. Jeffords -- my wife and I had a writing.

Q. What kind of a writing? A. Well, it is in the record here. Could I -- I have it in her handwriting.

Q. Would you like me to get it for you? A. I will get it.

371 MR. LEEMAN: Your Honor, I think while he is doing that, we might look at the record and see what date he was appointed executor so there won't be any question about it.

THE COURT: It would not be in my record.

You will have to look at the probate record.

MR. BIRD: I have the record here.

I have a certified copy here Mr. Laskey that says appointed February 21 -- no, the 21st day of March, 1960.

BY MR. LASKEY:

Q. Now you referred to some other document which gave you authority over the house? A. Yes, I have a number of documents here.

Q. Well, you referred to a specific document, did you not? A. Yes, I have it here.

Q. One that gave you control over the house after her death?

A. Under the instructions of Mrs. Jeffords, I had control over it, yes. I am pretty sure I have it here.

Yes, here they are. Do you want to see them?

372 Q. Yes, sir. A. There is one dated January 10, 1955, and there is that so-called power of attorney Mrs. Jeffords handed to me.

Q. But this is the document to which you referred? A. Yes.

MR. LASKEY: Mark this please.

THE CLERK: Plaintiff's Exhibit Number 7 for identification.

(The document above-referred to, was marked Plaintiff's Exhibit Number 7 for identification.)

BY MR. LASKEY:

Q. I had the clerk mark this Plaintiff's Exhibit Number 7 for identification, and I will hand it back to you, Mr. Bird, and ask you where in that document there is a single word about your taking charge of the house, and where there is anything except directions for funeral and burial? A. No, there is nothing in there about taking care of the house. I might say that --

Q. I don't think there is a question pending unless you wish to explain your last answer. A. Well, I think the will itself says that Mr. Keith and I are the residuary legatees.

373 Q. That is correct, but is there anything in the will that says that you are to take charge of the house when the life tenant has got it?

Find it for me, if you would, please. A. It says it gives the use, "of my house for her lifetime, all furnishings except what have hereinafter been bequested, or who may hold a bill of sale".

Now the rest of it goes to Mr. Keith and me after Miss Gill.

Miss Gill was moving. She was prepared to move before Mrs. Jeffords died. She had two automobile loads of household goods taken out of there. She borrowed \$500 down at the bank and had her niece --

Q. How do you know that? Are you telling us what someone has told you, Mr. Bird? A. No, I know of this personally.

Q. Were you there? A. Yes, I was there.

Q. At the bank? A. And a Miss Burton, her niece came up with the car to take her down there.

Q. I am talking about at the bank, were you there at the bank when she borrowed the money? A. No, I wasn't at the bank but I talked to Ellie about it.

374 Q. You are telling us what someone else told you? A. I talked to Ellie about it and talked to Mrs. McCord about it. Mrs. McCord was eager to get her out of there. She wanted to put her mother in there to run a rooming house, and started fixing up a machine.

MR. LASKEY: I move that be stricken as not being responsive.

THE COURT: Motion granted.

BY MR. LASKEY:

Q. Following the taking of the chest which was on a Saturday, did you at any time go to Mrs. McCord's house and review the contents of that chest? A. Yes.

Q. Was not that done at the suggestion of Mrs. McCord? A. Yes.

Q. And she took you to her house in her car? A. Yes.

Q. And there you went to the basement, recreation room? A. I went down some steps.

Q. To a recreation room or a room? A. Yes.

375 Q. And the chest was there? A. There was a chest there. I assume it was the same chest. It looked like it.

Q. You had seen it before? A. No, I saw it, not to scrutinize it. I saw it go down the steps.

Q. Do you have any doubt it was the same chest as went out of the house? A. No, I think it is the chest.

Q. Do you have any doubt about it? A. Well, I don't have very much doubt but some things I wouldn't want to swear to now.

Q. Can you tell me whether or not you have any doubt that the chest you saw in Mrs. McCord's recreation room was the same chest that was removed from the Jeffords' house on Saturday, December 19th? A. I would have a slight reservation, yes.

Q. What do you base that reservation on? A. On the manipulations that have transpired.

Q. What manipulations? A. Well, with regard to this chest and the bonds and different things.

Q. And what do you refer to as manipulations? A. Well, now, where do these -- I am referring to these bonds that disappeared, and we never

376 knew anything about until we later discovered them, we discovered them much later.

Q. Did you know of any bonds prior to the time you were told about them by Mrs. McCord? A. Well, we had searched -- we had the Treasury make a search.

MR. LASKEY: Read back the question please, Mr. Frye.

(Question read back by the reporter.)

THE WITNESS: I knew of bonds down in -- that had been down in the safe deposit box at the bank. I had been down there when the Register of Wills was down there and opened the box, yes.

I knew Mrs. Jeffords was blind, practically blind.

BY MR. LASKEY:

Q. Did you know of any bonds other than the bonds that were in the safe deposit box? A. Well, I saw them.

Q. When? A. I think that was the Monday after Mrs. Jeffords died. That is the first time I ever saw the will or anything.

Q. Those bonds were in the safe deposit box? A. Yes.

377 Q. And those bonds didn't disappear? A. Well, they were taken, they were accounted for by the Register of Wills.

Q. My question was, those bonds didn't disappear, did they?

A. Not that I know of. But I don't know what had disappeared from there on previous -- before that.

Q. You had no knowledge of any bonds that disappeared, did you?

A. I have no personal knowledge, no, of anything.

Q. The only knowledge you got of any two specific bonds which is the subject of the counterclaim here, was that given to you by Mrs. McCord on her deposition, isn't that correct? A. Well, those are the ones we are suing on because we had definite proof of that.

MR. LASKEY: If the Court please, I don't think that is answering the question.

THE COURT: No, that is not responsive.

THE WITNESS: Those are the only bonds that I will say that we know definitely about.

(Question read back by the reporter.)

BY MR. LASKEY:

378 Q. That is correct, is it? A. Those are the bonds, only the bonds that I know specifically about. Those are the ones she has admitted.

Q. That is the only information you got, with respect to those bonds, was from her? A. That is right.

Q. When you got into the recreation room, the chest was there, were your reservation that it was the same chest? A. There was a chest, yes.

Q. And there was a card table there, was there not? A. There was a card table put up. One of these folding card tables put up.

Q. And you and Mrs. McCord sat down? A. Well, I can tell you better how it happened if --

Q. Would you mind answering my question, Mr. Bird, you and Mrs. McCord sat down? A. I sat down. Mrs. McCord pulled her chair up and sat down and had a terrific fall. The chair collapsed underneath her. I was going to get up to help her but I was weak from having been through an operation. I almost fell, too, I was trying to help her, but she got up --

Q. She sat down again at the table, didn't she? A. Yes, she sat
379 down and went over to the cedar chest.

Q. And the chest was open? A. I don't know whether it was open. I think she opened it.

Q. I say, it was opened? A. It was opened while I was there; I don't know when.

Q. And while you were there? A. That is correct.

Q. Certain items were taken out of the chest, were they not?
A. Yes.

Q. And the purpose of your visit there at Mrs. McCord's suggestion was to go through the contents of that chest so that you could see what was in it, is that not true? A. No, no.

Q. All right, what was the purpose? A. All I know is what she told me now. She says, "I would like for you to come over and see what is in the chest, and I have some papers over here that I think you will want to have which will belong to Mrs. Jeffords' estate."

380 Q. Well, you went there for that purpose? A. Because Mrs. Jeffords was definitely on the way out, in my estimation.

Q. All right, you went there for that purpose, is that correct?

A. I went there under -- but I don't know whether I went there with that understanding.

Q. What was your purpose in going then? A. At her request.

Q. To do the things she suggested to do? A. She was acting as my assistant and she was quarterbacking the whole house.

Q. All right, we will get back to that later.

Let's stick to the recreation room now. While you were there, the chest was opened by Mrs. McCord in your presence? A. Well, it was open. I don't know whether it was opened then or had been open. I don't know who had the key. I never had the key to that chest. Never.

Q. Was the chest opened or closed when you got there? A. I would be unable to say. I think it was -- I think the lid was what you call down.

381 Q. And while you were there, the lid was opened? A. That is right.

Q. Now the chest had a tray in it that lifted out, did it not?

A. To the best of my recollection, yes.

Q. And the tray was lifted out and was it put on the card table?

A. I don't know. The card table wouldn't hold -- I mean it was a flimsy thing. I don't know whether it was put on there or whether --

Q. It was put somewhere nearby in your presence? A. Yes.

Q. Were there items taken out of the tray? A. I believe there were.

Q. Were they placed on the card table? A. I believe they were, yes. I am pretty sure they were.

Q. Were there also items taken out of the chest itself? A. Yes. Mrs. McCord went down in the chest and lifted up certain items.

382 Q. And put them, either handed them to you or put them in front of you, is that correct? A. I don't think she put anything from the recesses or the bottom part of the tray, I don't think she put anything out of there on the card table.

Q. Would you say that she didn't? A. No, I wouldn't say either way.

Q. All right. But I don't recollect she did. But I do know what she did, she --

Q. But there were certain items that were put on the card table, isn't that correct? A. Yes.

Q. And did those items include papers and documents in envelopes? A. They included a lot of envelopes, I would say legal size or probably a little larger than legal size -- like business envelopes from a bank or something like that.

Q. Bank envelopes? A. Yes, lots of them. With rubber bands around them, papers around them, and some of them papers sticking out of.

Q. Was there also an envelope of the expanding accordian-type? A. No, I don't recall any expanding accordian-type envelope. There
383 was some kind of a leather affair that had a little expansion at the bottom of it, I think.

Q. Were there securities taken out of the chest? A. Not that I saw. There were none that I know about.

Q. Do you deny that there were securities in the papers which were taken out of the chest and turned over to you on December 19 or December 21, rather? A. No, I neither deny it nor affirm it.

Q. Will you say that there were not any securities in that chest? A. I wouldn't say that I will say that there weren't, but I say so far as I know, there were none. It was --

Q. There is no question pending.

Did you examine the contents of any of the envelopes while you were there? A. Not while I was there.

Q. Did you at any time? A. Yes.

Q. Did they contain securities? A. No, not that I can recall of any.

384 Q. Now I will direct your attention to the following questions and answers on the occasion of the taking of your deposition on July 12, 1960, and starting with page 72:

"Question: Were there any securities, stocks or bonds in the cedar chest?

"Answer: No. Not that I could identify

"Question: That is not what I asked you.

"Answer: Well I can't say. If you asked me, I can't see anything that I did not identify. Everything was in envelopes.

"Question: Did you examine the contents of the envelopes in her house?

"Answer: No.

"Question: You did not?

"Answer: I did not. I did not examine any of the household or business papers of Mrs. Jeffords. Now, there is a follow-up to that, I will tell you that in sequence.

"Question: Tell me.

385 "Answer: Well, after I had gathered all the papers, with Mr. Sullivan's aid, he helped me, I had put them in a large, I would say you call it an accodian size envelope, and another large manila envelope, and also several other envelopes for bank statements. Nearly everything had on it American Security and Trust Company except the large accodian envelope, everything, and there was also a leather or leatherette case, sort of a brown or purplish-brown color which had a gold key. This was about, I measured it, 12 by 7 inches.

"Question: Where was that?

"Answer: That was among the things that Mrs. McCord handed me that day.

"Question: One of the contents of the cedar chest?

"Answer: Yes, apparently."

Did you give those answers to those questions on that occasion?

A. I believe so. I think that sounds correct.

Q. How long were you there on that day? A. Well, I thought about five minutes.

386 Q. From the time you went in until the time you went out? A. That is right.

Q. And you got these papers, sat down, and Mrs. McCord had a fall and you helped pick her up and then you went on through the contents and all that happened in five minutes? A. Now, that is a great many questions and I will try to answer them all.

Q. No, that is only one question, Mr. Bird, and we will have it read back, if you wish.

The question includes the statements of a number of events which you said transpired, and I am asking you if all that took place in five minutes. Can you say that it did or did not? A. It could have, and that seems about right to me. Mrs. McCord was in a hurry and she was in one of her very energetic modds. I told you she fell down and got up and was unphased.

Q. And drove you back to the house and remained at the Jeffords' house the balance of that day, didn't she? A. Yes, and all the things I had taken with me were put on the big table up there in the Jeffords' house and they stayed there I think until Mrs. Jeffords died. That was Mrs. McCord's office, the dining room table. She was using that for, 387 oh, a lot of things.

Q. Are those the papers you turned over to Mr. Sullivan? A. Well, I don't know as I turned over everything. I sorted some out to get Mrs. Jeffords' geneology and to fix up an obituary, and I sorted some of those things over and took them over to the apartment, some of them. Some of them stayed over there for a couple or three weeks.

Q. And you didn't bother to look through them to see if they contained any valuables? A. There was nothing there that appeared to me to be anything that anyone would steal.

Q. Well, did you look to see? A. Yes, I did.

Q. When? A. Well, at different times when I was over there. I think before Mrs. Jeffords' death and also after her death. We searched that house and found a -- there is one thing I am positive about, is that that Des Moines stock thing could never have been in that cedar chest

because it was upstairs in a cardboard box with a safety pin in it, and she was getting ready to take a deduction on it for income tax purposes.

388 That is the only thing that Mrs. McCord has ever said she was sure about and I am positive it wasn't.

Q. Directing your attention to some questions and some answers beginning on page 74 by Mr. Gray on the same occasion -- A. Well, I don't have that before me.

Q. Well, I will read it to you. If you wish to follow it, or your counsel follow my reading, he can do it from here. A. If there is anything wrong with it, I will tell you.

"Question: Then if Mrs. McCord did testify the other day that you and she sat around this card table and examined the contents of the chest, including the stocks and bonds, that is not true; is that correct?

"Answer: I will say that we did not examine the contents of any packages. I did not see at that time any stocks or any bonds or any -- there was no opening of any envelopes at that time.

"Question: All right. Then when were the envelopes opened?

"Answer: I presume Mr. Sullivan could answer that. I turned everything over to Mr. Sullivan several days later in an unassorted batch."

389

Now, did you give those answers to those questions on the occasion of your deposition? A. Yes.

Q. Are they true answers? A. I think so.

And Mrs. McCord further said in her deposition --

Q. Just a minute. A. She corroborates that.

MR. LASKEY: I submit the question has been answered and that that is not responsive.

BY MR. LASKEY:

Q. Do you remember giving these answers to these questions on the same occasion:

"Question: What about the securities you turned over to Mr. Sullivan after you took them from Mrs. McCord?

"Answer: I do not know about any securities turned over to Mr. Sullivan. I turned over all of the unassorted papers, and I mean they were unassorted.

"Question: They could have included securities?"

"Answer: They could have included securities."

390 Did you give those answers to those questions on that occasion?

A. It sounds as though you are repeating there. Let me see that.

Q. The bottom of page 106 and continued on 107. Here is where I started reading. A. I said, "They could have included securities."

I didn't say they did.

"They could have included securities."

Q. Well, the answer that I read is correct as it is written there, isn't it? A. That is right.

Q. And I read it correctly? A. I didn't hear it that way.

Excuse me, I am getting a little deaf.

Q. All right, I will try and keep my voice up.

Now, after having read it, you agree that you gave this answer to this question:

"Question: They could have included securities?"

"Answer: They could have included securities."

A. Yes, and they could have included lots of things that I don't know about.

391 Q. Mr. Bird, following Mrs. Jeffords' death, you were acquainted with the instructions which you have shown me in her handwriting as to her burial and what she wanted; is that correct? A. Yes, my wife was.

Q. And you knew that the burial was to be in Ohio? A. Yes.

Q. And you went to the funeral? A. That is right. Mrs. McCord horned in on that and I paid her way.

MR. LASKEY: May the witness be instructed to keep his answers responsive to the questions, Your Honor.

THE COURT: Yes.

BY MR. LASKEY:

Q. You heard that instruction?

THE COURT: Don't go beyond the questions.

THE WITNESS: All right, Your Honor.

BY MR. LASKEY:

Q. Mr. Bird, death was on Christmas Day, is that correct?

A. Well, you have said so.

Q. You were there in the house. Is that correct? A. Are you making a statement or asking a question?

Q. I am asking a question. A. Well, she died on December 25.

392 Q. Was it in the late -- A. The nurses' chart says, "eight o'clock." I was not there when she died.

Q. Were you there at all that day? A. Yes. I went over there.

Q. You know it was late in the afternoon or evening when she died, don't you? A. I was over there before her corpse was taken out.

Q. Now, did you make the funeral arrangements? A. Yes, with my wife.

Q. And when was the funeral? A. I believe that was on a Monday.

Q. In Ohio? A. No, at Hines.

Q. Did you go to Ohio with the body? A. Yes.

Q. And when did that trip take place? A. Well, we went, I think it was Monday night, went out there in an apartment. Got out to Shreve next morning, out in Ohio the next day. Went out on a train and came back by plane. Had to get -- it was snowing. We had to make several
393 transfers.

Q. I have in my hand here, Mr. Bird, a 1959 calendar. Can you see that all right? A. Yes.

Q. Christmas Day was on a Friday. That was the day of death?

A. Yes.

Q. Now, what did you do on Saturday, if anything, with respect to Mrs. Jeffords' papers or documents? A. Well, I was getting up an obituary, and I got her picture in the paper, took a picture off the wall and took it over to Hines, and they got her picture in the Star with a

nice obituary. She was a long-time Washingtonian, 89, and almost 90, and we worked on that quite a while, and I was over at the funeral parlor, and I had a call to come out to the house. I did a lot of things that day.

Mr. Souder, one of the roomers, had a bad spell. Got over there, she sent for me.

Q. So that took pretty much all day, did it? A. Well, Saturday, we made arrangements to select the casket, and lot of things.

Q. Did you do anything with respect to the assets of the estate on Sunday, the 27th? A. I don't know what we did. I was pretty tired.

394 Q. You have no specific recollection of having had any transactions or made any discovery or any accumulation of assets of the estate on Sunday the 27th? A. No, I don't. I may have. I don't know what I did. The roomers over there were after me, they wanted to know how long they could stay, would they have to get out and a lot of things. I don't know what I did.

Q. Now the funeral was on the 28th, is that right? A. I would have to look at my papers.

Q. Do you remember what day of the week it was? She died on Friday. A. Well, I will tell you what, I do know that I had to wait until Monday to go down to the bank to see whether or not I was the one who was in charge. I had been told I was, and all that, so I did.

Q. You went down to the bank on a Monday? A. Yes, and the Register of Wills sent a man down there and they checked over her safe deposit box and the will.

Q. And there was a will? A. The will was there.

395 Q. And the will was taken out? A. The will was taken out and there was a letter in there I had written out to Doctor Paul in Ohio that said she was to go to Shreve, Ohio, for burial.

I had those instructions during her life time.

Q. All right. A. I had wanted to see it officially.

Q. And did you see it? A. Yes.

Q. And the will was taken out of the box on Monday the 28th at the American Security and Trust Company? A. If that is the date, that is the date it was.

Q. And nothing else was taken out of the box? A. No, except what the Register of Wills took it out, and I think put it back in, I don't know.

Q. I mean taken out and taken away? A. Oh no, I couldn't have taken anything out of there.

Q. You didn't take it? A. Because it wouldn't have been, you know --

Q. Yes, but the jury doesn't know. I was just prying that out. Nothing can be taken from the box except the will and papers relating to the funeral instructions? A. You have a list. They made some lists and so forth.

Q. You didn't make any list? A. Yes, I did.

Q. Do you have that among your papers? A. I think so. I think so. I listed a lot of things.

Q. Was the funeral also on the 28th at Hines? A. Well, I don't know whether -- it, I think it was. I am not sure. I have some papers here that I would have to look at.

Q. Well, if you can't answer, we will go on to something else, Mr. Bird. If you can answer, please do so. A. Well, I think it was but I don't know.

Q. All right, I understand. A. You want things exact, I am sure, and I have to depend on my records because my memory is --

Q. Following the funeral when did you go to Ohio, the same night or the next day? A. Same night.

Q. To the best of your recollection, that would have been the 29th, the Tuesday after the funeral. You went there Monday night.

A. The 29th would be the next day after the 28th, yes.

Q. And then you completed the internment in Ohio, the arrangements for it? A. Yes.

Q. And returned here to Washington? A. Paid them off.

Q. And returned to Washington? A. Yes.

Q. And when did you get back to Washington? A. Oh, I think the next morning. That would be about the 30th, I think. As near as I can remember now. I am not sure, but it was morning. We were up two nights and a day.

Q. Now, Mrs. Jeffords was buried from Hines funeral home and not from the Woodley Road house? A. She was buried from Hines Funeral Parlor.

Q. Now you heard Mr. Sullivan testify here this morning and this afternoon that he met with you at your apartment on December the 29th or 30th. Is that correct? A. Well, I heard what he said. I don't think
398 it is correct but I don't know.

Q. Did you meet with him in his apartment, I mean, at your apartment? A. Mr. Sullivan came over to my apartment at my request on a phone call. I called him and he couldn't come until the next day, but the first thing I knew he was there.

Q. And at that time did you turn over to Mr. Sullivan certain documents and certain papers? A. I turned over to him quite a large batch of papers, yes. And many envelopes. He had a little car downstairs.

Q. And did he at that time in your apartment make a list of items including securities? A. No, he didn't.

Q. Let me complete my question, Mr. Bird.

Did he, at that time in your apartment, make a list of items, including securities? A. He did not, that I -- he did some writing on a piece of yellow sheet of paper and took it with him, and he wasn't very long at it and I don't know what he took. But I gave him the full name and I gave him the family tree. That is what I gave him, is the list of her relatives, people who should have notices.

399 THE COURT: Is this a good place to stop for a recess?

MR. LASKEY: Yes, Your Honor.

(A short recess was taken.)

(Proceedings resumed.)

THE WITNESS: There is a correction I might make here.

MR. LASKEY: To what question is that, Mr. Bird?

THE WITNESS: It is about the date of Mrs. Jeffords' funeral.

MR. LASKEY: All right, would you give us the correction?

THE WITNESS: She was prepared at Hines Funeral Home on Sunday, December 27th. Services on Monday, December 28th at 3 p.m.

MR. LASKEY: That is the date we are talking about, isn't it?

BY MR. LASKEY:

Q. All right, directing your attention now, Mr. Bird, to Plaintiff's Exhibit 6-B, and placing that before you, I will ask you if you have ever seen either that sheet or a photocopy similar to it, or the original
400 from which that was made? A. I don't recollect seeing this sheet. I may have. But there is a sheet that is filed in the Court record that I have seen. If this is a copy of it.

Q. The sheet filed in the Court record is the same copy as that, is it not? A. Well, I have seen it then.

Q. Was the original of that sheet prepared in your presence, at your apartment, on December 29 or 30, as testified by Mr. Sullivan?

A. I am pretty sure it wasn't, couldn't have been. I never --

Q. Did you say it could not have been? A. It could not have been. I think it was months afterwards before I ever saw that.

Q. I will ask you if again, on the occasion of the taking of your deposition in July of 1960, you were asked these questions and gave these answers --and would it help you if you followed the deposition with me -- A. Well, if I may ask the Court here something?

I wanted to say why I said that could not have been, and I would
401 like to explain why I think I am entitled to answer fully.

MR. LASKEY: I have no objection, if the Court please.

THE WITNESS: So I would like to see that sheet again.

(Handed by Clerk.)

THE WITNESS: Here it refers to the Bayco note. That could not have been because that was down at the bank and there was a lot of detail about it. And these building and loan accounts could not have been because they were checked and double checked, oh, for months after the death.

Now, as far as this up here at the top, this Johns-Manville, Langston, Sperry-Rand, Potomac Electric Power, AT&T, now, that, I don't know -- certainly it was not written on a piece of paper like this at the apartment.

BY MR. LASKEY:

Q. But those items could have been listed on a piece of paper at your apartment on that day, December 29 or December 30? A. Well, I think it is highly improbable. I didn't see it done.

Q. All right, sir. A. And I think it is improbable for the reason that I was interested and Mr. Sullivan was interested in getting the
402 names of relatives and persons to whom notices should be sent for advertising, and notifying the heirs at law. Publishing. Inserting a publication in the papers.

Q. That is one of the things an executor -- A. That comes first. That is the first thing first.

Q. Isn't an executor and his attorney also interested in making a list of the assets of the estate? A. Well, I don't know; possibly so.

Q. All right. A. I know some people are interested first in the money.

Q. Now, Mr. Bird, have you finished your explanation or qualification of your previous answers? A. I have nothing more to say on that.

Q. Now, would it help you if I put my copy of the deposition before you as I read it, so you could follow the reading? A. Well, it might, yes. Let's see it.

Q. All right.

Now, on the occasion of the taking of your deposition on July 12, 1960, were you asked the following questions and did you give the following answers:

403 "Question: Then if Mrs. McCord did testify the other day that you and she sat around this card table and examined the contents of the chest, including the stocks and bonds, that is not true; is that correct?

"Answer: I will say that we did not examine the contents of any packages. I did not see at that time any stocks or any bonds or any -- there was no opening of any envelopes at that time."

Did you give that answer to that question? A. Yes, and Mrs. McCord did likewise.

MR. LASKEY: I submit the balance of that should be stricken as not responsive, Your Honor.

THE COURT: Stricken as not responsive.

BY MR. LASKEY:

Q. Now,

"Question: All right, then when were the envelopes opened?

"Answer: I presume Mr. Sullivan could answer that. I turned over everything to Mr. Sullivan several days later in an unassorted batch."

Now, did you give that answer to that question? A. Yes.

Q. Is it true? A. Yes.

MR. LASKEY: Thank you.

404 One further matter, Mr. Bird.

BY MR. LASKEY:

Q. Mr. Bird, the other morning it has been reported to me that you, just before the start of the proceedings, scattered something on the floor around my chair and around Mrs. McCord's chair. Is that correct, did you do that? A. Yes.

Q. What was it, salt? A. Salt.

Q. What was the purpose of it? A. Well, I wish you bad luck.

MR. LASKEY: Thank you, sir, that is all.

THE WITNESS: Very bad luck.

* * * * *

412 MR. LASKEY: I would now like to read the deposition of Charlotte B. Souder.

THE COURT: This is the deposition of a witness who is unable to be here, members of the jury, because she is ill. Her deposition was taken previously and Mr. Laskey is going to propound the questions and Mr. Gray is going to impersonate her and give the answers, which will make it a little more intelligible than if Mr. Laskey asked the questions and then answered them.

Mr. Gray is not Mrs. Souder, of course.

MR. LASKEY: Not even a reasonable facsimile, Your Honor.

MR. LEEMAN: Your Honor, I was mistaken on that. I don't have a copy of this deposition.

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413 (Whereupon, the reading of the deposition of Charlotte B. Souder, taken December 9, 1960, followed.)

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EXCERPTS FROM THE DEPOSITION OF
CHARLOTTE B. SOUDER

Washington, D. C.,
Friday, September 9, 1960.

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EXAMINATION BY COUNSEL FOR THE PLAINTIFF
BY MR. GRAY:

Q. Mrs. Souder, will you state your full name, please?

A. Charlotte Banfield -- B-a-n-f-i-e-l-d -- Souder.

Q. How old are you, Mrs. Souder? A. 68.

Q. Where are you residing at the moment? A. 4102 Madison
Street, Hyattsville, Maryland.

Q. Are you are here in response to a subpoena? A. That is
correct.

Q. Are you acquainted with Mr. James F. Bird, one of the defend-
ants in this action, who is sitting over here (indicating)? A. Yes, I am.

Q. Were you acquainted with Mrs. Laura Jeffords? A. Yes.

Q. Would you tell us when you first became acquainted with Mrs.
Jeffords? A. Well, it was around the first week of August. I had answer-
ed an ad in the paper. She had a telephone number. I called her and made
an engagement to go down and look for a room for rent.

3 Q. What was the year? A. 1958. It was around the 8th or 9th of
the month. I moved in the 13th.

* * * * *

Q. Did you rent a room in her house? A. Yes. I rented the front
master bedroom with a private bath.

* * * * *

Q. How long did you live there, Mrs. Souder? A. I lived there
until December 27, 1959, when I had a heart attack and had to go to
Providence Hospital.

* * * * *

4 Q. Now, after you came to live in Mrs. Jeffords' home in August,
1958, did you get to see her very often? A. Well, practically every day,

a couple of times. One Christmas she went some place with friends, I think, up in Maryland, and stayed 2 or 3 days. That is about the only time I didn't see her every day. I saw her every day except when I went away.

Q. Did you talk with her much, or visit with her? A. Yes. I read her mail to her, answered her letters. Sometimes I wrote her checks.

Q. Could she read? A. She didn't try to read. But she could sign her checks. She could read her letters, not completely; she would get them, some of them, and when I came in, or Mr. Lagoda or Mrs. McCord, she would ask us to read them over to her, to get it all. She couldn't always get the complete thing.

Q. Did she have trouble with her eyesight? A. She had side vision, she told me. They couldn't correct it with glasses because she had only side vision.

5 Q. So, her vision was affected? A. Yes.

Q. Did she wear glasses at all? A. No. She used a magnifying glass. She had one hanging around her neck on a chain. She had a much stronger one by the telephone, on a shelf there -- a much stronger magnifying glass there.

* * * * *

8 Q. Mrs. Souder, do you know Mrs. Estelle McCord, the plaintiff
9 in this action? A. I do.

Q. When did you meet her? A. Shortly after I went to room with Mrs. Jeffords.

Q. Where did you meet her? A. In Mrs. Jeffords' home.

Q. And would you tell us, if you remember it, the circumstance under which you did meet her? A. Well, she came there to do some work on some books, keeping records for income taxes, I remember. She came in in the middle of the morning and stayed until after lunch.

Now, I can't tell exactly what she was doing. That is the impression I had.

Q. Did you see her from time to time after that? A. I did.

Q. At Mrs. Jeffords' home? A. At Mrs. Jeffords' home.

Q. How often did you see her? A. Well, as I say, I kept no record.

I saw her quite frequently.

Q. Did you ever have any discussion with Mrs. Jeffords about Mrs. McCord? A. Oh, yes.

Q. And what was the subject of the conversation or discussion?

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(Pertinent question read back by the reporter.)

THE WITNESS: Well, that was quite, there was quite a few of them. She told me that Mrs. McCord, when she was younger, had stayed with her for quite a while, and they had gone to Europe together; that when she was a child -- her father died and she and her first husband very much wanted to adopt her, but her mother would not consent to it -- that she was the nearest thing to a daughter, and nearer to her than any daughter legally.

This did not take place all at one time. This was over a course of time.

BY MR. GRAY:

Q. Now, you have testified that you were acquainted with Mr. Bird? A. That is right.

Q. And when did you first meet Mr. Bird? A. One Saturday afternoon during that August I went -- I don't know if it was the first Saturday I lived there or the next one. There wasn't anybody at home but me. I answered the door. He was standing there.

11 He said he wanted Mrs. Jeffords, and I said she wasn't home.

He said, I don't know exactly what he said. He said he wanted to come in. He had a little package. He had some strawberries put in a box for her.

Q. And did you have occasion to tell Mrs. Jeffords about this?

A. Yes, I did. When she came in, I told her he had some strawberries for her.

She said, "Did you let him in?"

I said, "I did."

She said, "Don't do that. Don't leave anyone in when I am not home, unless it is a visitor of your own."

Q. And do you remember the time when Mrs. Jeffords became ill?

A. I do.

Q. Do you recall when that was? A. To the best of my knowledge, I am almost sure it was the second Sunday in October.

Q. Of what year? A. In 1959.

Q. How did it come to your attention that Mrs. Jeffords became ill? A. She called up, I think. Three of my children, she had telephone numbers for all of them, and one of them told her to call Mrs. Powers. They thought I would be there. I was there.

She said she was ill, "Would I please come home?"

I didn't talk with her. She told my daughter that. My daughter said we were just getting ready to eat. "Shall I bring her before dinner or after dinner?" She said, "Before dinner."

My daughter drove me up there.

Q. By "there," you mean to Mrs. Jeffords' home? A. That is right.

Q. At what time of day was this? A. It was around 5 o'clock, I imagine.

Q. And did you find Mrs. Jeffords there? A. Yes, she was lying on the davenport in the dining room, where she spent a good bit of time listening to her radio. At that time it was not turned on.

I said, "You have been out too much in the heat this week, haven't you?"

She said, "Well, I didn't stay to church this morning. I came home after Sunday School, because I didn't feel well. I got me a cab and came home." And she said, "I have been stumbling around, and my arm hurts." And her speech was very thick.

I am not a doctor, but my husband had three strokes. And I was

13 under the impression that perhaps she had one. I wanted to call the doctor, but she wouldn't allow that.

Q. Did there come a time when she went upstairs that evening?

A. Oh, yes. I helped her upstairs and helped her in bed.

Q. About what time was that? A. It was around 8 o'clock. When I got her settled down, I went downstairs then and called Mrs. McCord and told her I thought she had a stroke. I thought she ought to have a doctor. "Would she please come down?" And she did.

Q. Were you there when Mrs. McCord came there? A. Yes.

Q. How long did she stay? A. Oh, I don't know, maybe half an hour, maybe a little longer. She would not consent to have a doctor.

Q. Mrs. Jeffords would not? A. Mrs. Jeffords would not consent to her calling a doctor that night.

Q. I see. Do you recall anything about the next day? A. Yes. She got up, she got dressed, told me she was going to go out. So, I called Mrs. McCord, that she had better come down there. She came down. And she was determined to go out.

Mrs. McCord took her with her home.

14 Q. Did she come back later, Mrs. Jeffords? A. I should imagine, judge about 5 or 6 o'clock that afternoon, yes.

Q. Now, did Mrs. Jeffords seem to be any better than she had been the day before? A. I believe she was a little better, yes.

Q. Was she able to talk intelligently? A. Oh, yes. Her speech wasn't as thick as it had been the day before. She talked intelligently the day before, only she told me she would not have a doctor, she didn't believe in doctors.

Q. Was there any evidence to you that her mind was affected by this? A. No, sir.

Q. Well, do you recall anything about the next day? A. Yes.

Q. Would you tell us what you recall about the next day? A. I walked up and down the hall between her room and mine all night, because she wouldn't have a doctor and I was worried about her. I was afraid to go to bed and leave her.

The next morning about 8 o'clock she got up, and she said, "Will you help me get my clothes on?" And I did. And she was standing at the foot of the bed.

* * * *

THE WITNESS: She was standing at the foot of the bed. She
15 was holding on to the bed.

I was standing behind her buttoning the back of her waist. She got limp and started going down. I have no calcium in my bones. I couldn't dare try to support her. I had to go with her to the floor.

* * * *

Q. Then what did you do? A. I went and called Mrs. McCord and told her that something had happened to her. I didn't know exactly what had happened, but that she had gotten very limp, she seemed to be unconscious when I got her to the floor.

Then I went next door and got Mr. and Mrs. Copeland, John Copeland. And I said, "Do you think we could get her in bed until Estelle gets here and brings a doctor?"

"I don't think that would wise," Mr. Copeland said. So, I put a blanket over her, put a pillow under her head until the doctor came.

Q. Did the doctor come? A. Yes.

Q. What was his name? A. Dr. Richwine.

Q. Do you know what his first name is? A. No, I don't. I may have heard it, but I don't recall it right now.

Q. Was anyone with him? A. Mrs. McCord came in about the
16 same time. I don't know if she came in with him. I think she came in first.

Q. Did you later call anyone else that day? A. No, she told me not to. I wanted to call Mr. Bird. She said, "Don't tell anybody I am sick." That was 2 or 3 days before she told me I could go call him.

Q. Did there come a time when Mrs. Jeffords required nurses?
A. Oh, yes.

Q. How soon after the first attack was it? A. It was a week or more,

I believe. Of course, when they first tried to get a nurse, we couldn't get one. It took a couple of days to get a nurse.

Q. How do you know that? A. Because I heard Mrs. McCord make different calls with different agencies, where they have these nurses on the register.

Q. Mrs. McCord was trying to locate a nurse? A. Yes, that is right. But I couldn't tell you exactly what time she came there, or what day she come there.

Q. Well, did there come a time when you had some discussion with Mrs. Jeffords about a power of attorney? A. Yes, there did.

Q. When was that?

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(Pertinent question read back by the reporter.)

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THE WITNESS: Now, I can't tell you exactly when it was.

BY MR. GRAY:

Q. Well, in relation to the time that she became ill? A. Her hand, she didn't have enough use of it to make a good signature. Now, I have written many checks for her.

Now, I'd put a pen where her name started and she would write downhill or uphill. The time came when she wasn't capable of writing a signature that could be read. And there had been some discussion of a power of attorney.

I went in and talked to her. And I said, "You are going to have to come to it; why don't you do it?"

She said, "When I can't take care of my own business, then I will give someone power of attorney."

I said, "You can't take care of your own business now. Why don't you do it now when you can watch it?" So, finally she said she would.

Q. You say there was some conversation in the house about a power of attorney. Who had that conversation? Where was it? Was it with Mrs. Jeffords and somebody else?

18 A. It was somebody else. It was downstairs, more or less. It was a number of people in the house.

Q. Who was in the house at the time? A. Mr. Bird was there; Mrs. Bird was there. I didn't hear her say anything about it. He didn't say he wanted to have power of attorney. He said somebody ought to have it.

Q. Anybody else talk about it? A. I believe he discussed it with Mrs. McCord, and she agreed that he should have the power of attorney to take care of the business.

Q. Did you know, of your own knowledge, whether Mrs. Jeffords did, in fact, execute a power of attorney? A. Yes.

Q. How do you know that? A. Because I was in the next room when the doctor, the lady from the bank, and the man that was going to take the oath, witness it, came up from the bank. And Mr. Bird, well, they were all up there.

I wasn't in the room. I was in the next room, but I could hear them in there talking.

Q. And they were talking about the execution of a power of attorney? A. Yes, that is right.

Q. Do you recall approximately when that was? A. I should say it was in November, but I couldn't tell you just exactly when. I know it was before Thanksgiving, I am sure of that.

19 Q. Had you seen Mrs. Jeffords earlier that day? A. I had.

Q. Did she appear to you to be of sound mind at that time? A. Soundest mind you ever saw.

Q. After Mrs. Jeffords became ill, did you see her more frequently or less frequently, or what? A. I practically stayed in the house. I went out to Mass every morning and came back. Many days I didn't leave that house again.

Q. Did you have occasion to observe any jewelry that Mrs. Jeffords owned? A. Oh, yes. I fastened her diamond bracelet and fastened her necklace. And she had rings. She had a diamond pin, I think, at one time.

She had a lot of costume jewelry just thrown loose in the vanity drawer; but the other jewelry she wasn't wearing on her person, where it could be seen, she had pockets sewed in her suit, and that is where she had it.

Q. Did there come a time when Mrs. McCord showed you some rings? A. That is correct.

Q. Do you remember when that was? A. This was about 2 o'clock in the morning, Sunday, before she died on Christmas night, which was
20 Friday. I think it would be probably the 19th, no, the morning of the 20th of December, Sunday morning, about 2 o'clock.

MR. CLARKE: Was that 10 o'clock?

THE WITNESS: Two o'clock.

MR. CLARKE: Two o'clock?

THE WITNESS: Yes.

BY MR. GRAY:

Q. Do you recall these circumstances? A. Yes, I do.

Q. Well, suppose you tell us what you recall about it? A. I was sitting in my room reading, and I heard the nurse say, "She is soaking wet again, we'll have to change everything."

Q. Do you remember the name of the nurse? A. It was a Russian name, Michlak (sic), or something like that, or Michalka.

Q. Mrs. Jeffords had several nurses, didn't she? A. That is right. Mrs. Michalka hadn't been there very long.

Q. All right. You heard this remark by a nurse, and then what happened? A. Well, I didn't go in there then.

Q. Who else was there? A. Mrs. McCord, and I think Lillie Mae was there, but I am not positive.

21 Q. Lillie Mae who? A. She was supposed to be the cook, but then Mrs. Jeffords got so sick she came in at night and helped the nurse.

Q. What was her last name, if you remember? A. I do not know.

Q. Was she a white or colored person? A. A colored woman.

Q. Her name was Lillie Mae? A. That is right. If you tell me her last name, I will tell you if it is right or not. I can't recall it myself, though.

Q. After you heard this remark by the nurse then, what did you do? A. I heard them moving around in there for a while. Then Mrs. McCord came in and she said, "I have Mrs. Jeffords' rings." And she opened this little bag, about so big (indicating), sort of a dingy, tattle tale gray, white cotton of some kind. And she had 4 rings and a \$20 bill in it.

Q. Could you describe the rings for us? A. Well, there was a wedding band with a little chipped diamond in it, and a little band, like, on top of the ring.

And there was a large solitaire.

Q. There was a diamond ring? A. A diamond ring. Listen, I am not a jeweler. I took them for diamond rings.

22 Q. I understand that. A. And then there was a diamond ring. The stone was set on a kind of a slant. There were two stones, one here (indicating) and one like that (indicating), you see, to the side of it. And then there was one, a brilliant one, brilliance around at the bottom of it. And then there was a \$20 bill folded up.

Q. Was this bag closed in any fashion? A. It had a draw string.

Q. A draw string? A. Yes. I said, "Go downstairs and call Harlow."

Q. Who is Harlow? A. Her husband. "Call Harlow and tell him to come out front and watch me."

I said, "I will stand in the window and watch you lock your car to be sure there is nobody behind the seat. Get in and lock both doors, so nothing happens to those rings on the way home."

Q. And did Mrs. McCord then go home? A. Yes.

Q. Now, did you ever see in Mrs. Jeffords' possession a 3-diamond ring? A. After she stopped wearing her good rings on her left hand, she wore this yellow gold one with 3 stones in it. And I said, "You get a new ring?"

23 She said, "Estelle bought it for me from New York, because I miss my diamonds." This was a zircon she had on. She missed wearing her diamonds rings.

Q. Did you ever hear of any other 3-stone ring or a 3-stone diamond ring that Mrs. Jeffords owned? A. No, I didn't hear anything about it. I can't say she didn't own one. All I can say, to my knowledge she didn't, I never saw one.

Q. Did she ever say anything to you about a 3-stone diamond ring?
A. No, she did not.

Q. Now, during the course of your stay at Mrs. Jeffords' home, starting in August, 1958, did you have occasion to go into her bedroom?
A. Oh, many times.

Q. Do you know about the furniture that was in the bedroom?
A. Yes.

Q. Do you know whether or not there was what might be described as a cedar chest in that bedroom? A. That is correct.

Q. Did you ever have any conversation with Mrs. Jeffords about that cedar chest? A. Yes.

Q. When was the first time you had any such conversation?
A. It was sometime in the fall. I had been in there a number of times,
24 but this day she wanted me to trim some hats.

MR. CLARKE: Excuse me. Can we fix the date a little more carefully?

THE WITNESS: I would say early fall of 1958?

MR. CLARKE: Before she was ill?

THE WITNESS: A year before, 1958.

MR. CLARKE: Thank you.

THE WITNESS: She had this box, about this long (indicating), about this wide (indicating) full of hats.

BY MR. GRAY:

Q. This is just a hat box. You are not describing the cedar chest?
A. No. She pulled it out. She put it on the bed, and she said, "I know you can trim these hats."

I said, "Mrs. Jeffords, I can't trim hats. If I work, I get \$17. And if I spend a day -- I don't do it for myself, and I won't do it for you."

And then she pulled them out one by one. And then I saw feather, then I sewed some feathers on one, a flower on another one.

And then while she was there sitting there talking, I said, "That is a big chest."

Q. Did you have the maid there? A. I don't know whether she said the maid or not, but she agreed it was a great big chest. And that is all that was said about it at that time.

25 Another day, she wanted me to come in there and comb her hair for her. And she opened the chest with a key she had in this little bag she had on her shirt.

She opened the chest and got a \$20 bill out of the pocket. And I said, "Why don't you use checks?"

"Well," she said, "I have to have a little money in the house." And she got to talking then. I couldn't see what was in there, clothing or something.

She said, "I've got my mother's silver tea spoons in here. I put them in here, because this is Estelle's chest. I gave it to her. And I want her daughter to have them, because I have no daughters."

Q. Did she say anything about anything else that might have been in the chest? A. Yes. Another day she said, "I've got sheets and pillow cases here in case I get sick." When she got sick, she wouldn't let us have them.

Q. You said that she said she wanted the chest, or that the chest, rather, was Mrs. McCord's? A. That is right.

Q. Did she say anything about any other of the contents in it, either specifically or generally? A. No. She just said that everything in the chest was packed in there for Estelle, outside of the linen, if she got sick -- sheets and pillow cases.

26 Q. The sheets and pillow cases were for Mrs. Jeffords? A. For Mrs. Jeffords if she got sick. Everything else in there was for Estelle.

Q. Did you ever hear any conversation between Mrs. McCord and Mrs. Jeffords about the chest? A. Well, it was mostly Mrs. Jeffords.

Q. Well, did you hear anything? A. Yes. She said several times that the chest was Estelle's.

Q. This is something she said to Mrs. McCord? A. Yes. She said, "If it is here and I should die, it becomes part of the estate. And I want you to have it."

Q. Now, was this after she became ill? A. That was after she became ill, yes.

Q. In 1959? A. That is correct.

Q. How soon after she became ill? A. Oh, maybe 2 or 3 weeks, a month. Oh, it wasn't immediately, because at first she didn't think she was very sick. Somewhere, probably, in November.

Q. Some time in November you heard her say this to Mrs. McCord?

A. Yes.

Q. Did Mrs. McCord say anything to Mrs. Jeffords about it?

27 A. She said, "I will get it some day."

Q. Now, did you hear any conversation between Mr. Bird and Mrs. McCord about the chest? A. I did.

Q. Can you remember when that was? A. It was the Saturday before she died, before Mrs. Jeffords died.

Mr. Bird told Mrs. McCord, he said, "Now, today, while your husband is home, why don't you get that chest up there?"

He said, "If you are going to leave it here too long, you won't get it."

So, she called her husband and her son-in-law, and they came down and took the chest out.

Mr. Bird stood in the doorway between the living room and the hall. I was sitting reading my morning paper, and they took it out.

Q. Where did this conversation between Mrs. McCord and Mr. Bird take place? A. In the living room and in the hall.

Q. And you were where? A. I was sitting in the living room reading my paper.

Q. Did you hear at that time, or at any time, Mr. Bird say to

Mrs. McCord anything about taking the chest for safekeeping? A. Of course not. He knew better than that.

28 Q. Had you seen Mrs. Jeffords that morning, do you recall?

A. Yes. I went in every morning to see her. I went to Mass. As I came home from Mass, I would walk in to see her before I went into my own bedroom.

Q. What time would you go to Mass? A. Eight o'clock.

Q. Do you remember on this particular morning as to whether you saw Mrs. Jeffords or not? A. I can't say that I did, because, as I say, I went in every morning, and I went to Mass every morning. So, I am quite sure I went in that morning.

Q. Did she appear to be of sound mind at that time? A. At that time, she wasn't having much to say to anybody. The next day she had the massive stroke. That day she was just like she was half asleep most of the time. I wouldn't say she was in a coma.

Q. Did you have an opportunity to talk to her? A. She sent the nurse for me to come in there every once in a while to hold her hand. I would go in and hold her hand.

When I first got sick she said, "Don't you go to the hospital. Anything happens, you get in that other bed and stay by me. I am paying that nurse. She can take care of two people."

Fortunately, I didn't have to go until after she died.

29 Q. I asked you if, on this day, which was Saturday, about her her mind, before she died whether her mind appeared to be clear and sound? A. I would say so, yes.

Q. Was there any doubt in your mind about that? A. Not a bit, because even after she went into a coma there was times we knew she could hear. I would say, "If you can hear what I am saying, shut your eyes."

Q. And would she shut her eyes? A. Yes. She couldn't talk then; she still could hear what was going on.

Q. Do you know, of your own knowledge, whether, during the period of her last illness -- and that goes to the period starting in October of

'59 -- Mrs. Jeffords made any gifts of anything else to anybody? A. Yes. She insisted on Mrs. McCord having some oriental rugs, which were in the attic. She sent Ed Haley up there to get them, the time the man got there to lay the wall-to-wall carpeting.

She insisted on her having, taking them out of the house.

Q. Were there any other things that Mrs. Jeffords may have given to anybody else? A. Yes. She gave the kitchen china to the cook, Lillie or Ellie Mae. She just barely had enough left for us to eat off of.

30 Q. About when was that? A. I should say, maybe, that was 2 weeks -- it was on a Saturday. It wasn't the 19th; it must have been the Saturday before. It must have been about the 12th of December.

Q. Now, do you remember anything special about Sunday, the 20th of December, 1959? A. That is the day she had the massive stroke.

Q. What time of the day was it, if you recall? A. Around noon, I think.

Q. Were you at the house then? A. I was.

Q. Was anybody else there? A. Well, the nurses were there. I think Mr. and Mrs. Bird were there; weren't you? I think they were.

Mr. Bird used to come down on Sunday around 11 or 12 o'clock. On other days of the week he came earlier.

Q. Did you have occasion to see Mrs. Jeffords after that? A. Every day. I was in the room the night she died.

Q. Now, from the time you first met Mrs. Jeffords until she died, can you tell us your opinion as to her mental condition? A. I would say she was a very shrewd person. She was a very determined person.

Q. Did she appear at all times, during that period, to be a person of sound mind? A. Absolutely. That is, I am not a doctor, you know, but in my opinion she was certainly of sound mind.

31 Q. I understand you are not a doctor. A. I am just offering my opinion for what it is worth.

Q. That is all I asked you for, your opinion. Did it ever occur to you that she was anything other than a person of sound mind? A. No.

Q. During some of this period, after she became ill, she had certain physical frailties, incapacities? A. Yes, but not mentally.

* * * * *

EXAMINATION BY COUNSEL FOR THE DEFENDANTS

BY MR. CLARKE:

* * * * *

33 Q. All right. Now, Mrs. Souder, you stated that later she told Estelle to take the chest home, and made the statement in your presence?
A. That is correct.

Q. Could you tell us the date, exactly, when that was made?

34 A. No, but I should. It was some time in November.

Q. That would be about a year later? A. In '59.

Q. In '58? A. No, '59, that is when she was sick in bed, November of 1959.

Q. In '59? A. That is right.

Q. Did you have any other conversation with Mrs. Jeffords from 1958 until this November conversation of 1959 regarding the chest?

A. At various times she said the chest was Estelle's. She also said she gave her the dining room suite. She also said she had a bill of sale for the antique furniture that was in the living room.

Q. Where did she make this statement, in reference to the chest, in 1959; where was she, physically? A. She was in the bed the last time.

Q. Who else was present at that time? A. Estelle was there, and I think one of the nurses. I don't remember which one. I believe it was Miss Cole.

Q. Where were you? A. I was in her bedroom sitting by her bed holding her hand.

35 Q. Now, you made reference to the effect of a conversation between Mr. Bird and Mrs. McCord in reference to the chest sometime, I believe, about Saturday before the death of Mrs. Jeffords? A. Yes.

Q. Where did that conversation take place? A. In the living room. I was there, Mrs. McCord, Mr. Bird.

Q. Was anyone else there? A. Probably Miss Gill. I don't think she was in the living room. She was in the house some place. I couldn't tell you exactly where.

* * * * *

40 **FURTHER EXAMINATION BY COUNSEL FOR PLAINTIFF**
 BY MR. GRAY:

* * * * *

41 Q. Now, Mrs. Souder, you have testified as to several instances of conversations with Mrs. Jeffords about this cedar chest. And I believe you testified that she told you that it was Mrs. McCord's? A. Yes, she had given it to Mrs. McCord.

Q. And isn't it also true, if I understood your testimony correctly, that Mrs. Jeffords said to you on several occasions, that the chest and its contents were to be Mrs. McCord's? A. That is correct.

Q. But you don't know anything about the contents, except what you have testified to? A. Except what I told you. The silver tea spoons was in there, and she had some rings, some linen in there if she got sick.

* * * * *

611

JAMES F. BIRD

resumed the stand as a witness and having been previously duly sworn, was examined and testified further as follows:

FURTHER CROSS EXAMINATION

BY MR. LASKEY:

612 Q. Mr. Bird, on Friday you testified with respect to a waiver which you I believe said you prepared and you signed and Mr. Keith signed. It was a waiver, as I understood you, directed to Mr. Sullivan, waiving the attorney-client privilege. Was there such? A. Well, that is partly true and partly incorrect.

Q. Well, was there a paper? A. There is a paper that I prepared on my own typewriter and submitted to Mr. Sullivan. Mr. Keith had signed it, to the effect that we consented to showing the attorneys of

Estelle McCord's outfit, everything, to permit them to see everything. They were making a point of that.

THE COURT: What is that?

THE WITNESS: They were making a point of it at the time.

THE COURT: All right.

BY MR. LASKEY:

Q. Do you have that paper that I asked you to produce at the conclusion of our session last Friday? I ask you to produce it. Do you now have it? A. I haven't seen it. I haven't been able to find it. I have asked Mr. Leeman to look for it. I don't think he has had time to look for it. But I have only the pertinent papers here in the file and I don't
613 know whether it is at home or -- I don't think it is. I don't know what has become of it. It was never filed.

Q. And was it prepared for filing in Court or was it prepared for delivery to Mr. Sullivan? A. I prepared it for delivery to Mr. Sullivan who was to place his signature on it and file it.

Q. Was it delivered to Mr. Sullivan? A. Yes. At least, he saw it.

Q. Was it ever revoked? A. Well, I think he revoked it -- he was unwilling to do it at that time. Later Mr. Gray was in his office and did see everything, and I mean everything.

Q. Were you there? A. Yes, I was there.

Q. Fix the date, please. A. All the personal, private trinkets and everything, examined them, felt them, and all that. Mr. Gray was there.

Q. How about the securities? A. Well, of course we didn't know about them at the time, or we had just discovered that they were missing. We didn't see those.

614 Q. You did not see any securities? A. No. Mrs. McCord had those and Gray never said a word about them.

THE COURT: Securities missing?

THE WITNESS: Yes, these bonds, Judge. They were gone and we didn't. --

THE COURT: You mean these two \$5,000 Government bonds?

THE WITNESS: Yes. And the stock, they were in Hemphill, Noyes.

THE COURT: Oh yes.

THE WITNESS: They had already gone to New York and we had an order to sell them, when they came in and asked to have it enjoined.

BY MR. LASKEY:

Q. When was this document executed and given to Mr. Sullivan?

A. I don't know the date but it was sometime after Judge Holtzoff had ruled that they couldn't -- that we didn't have to produce anything.

Q. When, was it between the time of the taking of Mr. Sullivan's first deposition on July 26, 1960, and the resumption of that deposition
615 of October 11, 1960? A. What is that?

Q. Mr. Charles B. Sullivan, Junior. A. Whose deposition?

Q. The deposition of Charles B. Sullivan, Jr., first started on July 26, 1960. I think you were present, were you not? A. No, I was not. I was never present when Mr. Sullivan's deposition was taken. He had an attorney named Clark who was associated with him to be present.

Now I might say that I cannot from my recollection say what the date of that paper that I had was, but I don't think it was dated.

Q. Well I am trying to fix the date because as I understood the securities themselves went to Hemphill Noyes after Mr. Sullivan's deposition was taken. Isn't that correct? A. I don't know. I doubt it but I really don't know.

I am pretty sure that everything -- we had an order to sell all the stock, and all of it, at that time.

Q. Did you at that time in this waiver restrict the waiver of the privilege merely to the examination of documents? A. No, I didn't restrict anything.

616 Q. Did the privilege which you waived or which this document waived, cover the testimony of Mr. Sullivan as to conversations with you?

A. Could you repeat that?

Q. Did the document which you prepared and signed with Mr. Keith and delivered to Mr. Sullivan waive the attorney-client privilege with respect to conversations between you and Mr. Sullivan? A. Well, I don't

know, except what it said. I prepared this paper on my own typewriter and Mr. Keith was here, and there was a lot of point about whether there were a lot of things missing, and I told that we were willing to show them everything.

Q. My question is, did it waive the privilege as to conversations between you and Mr. Sullivan? A. It didn't say that it did, no.

Q. Did you intend it to? A. Well I don't know what I intended. I intended that I was willing, Mr. Keith and I were willing to show them everything at that time.

Q. Were you willing to have him tell everything about his transactions with you? A. I don't know about that but I was willing for
617 them to see everything.

Q. Are you now willing to have Mr. Sullivan testify as to his conversation with you? A. No, I am not, in view of some things that came up here yesterday about copies of papers.

He and Mr. Gray, have been in association and doing business together while Mr. Sullivan was representing me.

MR. LASKEY: This is not responsive but if the Court - I would move to strike it.

THE COURT: It will be stricken.

MR. LASKEY: Otherwise we would have to go into another matter.

THE COURT: It will be stricken.

MR. LASKEY: The answer is that he does not now waive the privilege.

THE COURT: That is right.

MR. LASKEY: And the balance is stricken.

THE COURT: Right.

MR. LASKEY: And may the jury be instructed to disregard it?

618 THE COURT: The jury is so instructed.

MR. LASKEY: Thank you.

THE COURT: Any cross?

MR. LEEMAN: No, Your Honor.

(Witness left stand.)

THE COURT: Now do you rest, Mr. Laskey?

MR. LASKEY: Yes, Your Honor.

THE COURT: The jury will retire again.

* * * * *

657

JAMES F. BIRD

previously sworn, was called as a witness, and was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. LEEMAN:

Q. Mr. Bird, you have already testified that your name is James F. Bird, and you are a member of the Bar of the United States District Court for the District of Columbia, and the United States Court of Appeals for the District of Columbia? A. Yes.

Q. And your address? A. 2707 Woodley Road.

Q. Mr. Bird, when did you first become acquainted with Mrs. Laura L. Jeffords, the deceased? A. I can't remember any particular date, but it was probably 1945, somewhere along there.

658 Q. Will you state whether or not you were acquainted with her husband? A. Yes, I was.

Q. And his name was? A. Tracy L. Jeffords.

Q. And his occupation? A. He was an attorney.

Q. And was he engaged in active practice in the District of Columbia. A. Yes, he was.

Q. And did you have any professional relations with Mr. Jeffords? A. Yes, I did.

Q. What was that? A. Well, he referred cases to me. Mr. Jeffords, I had known him a long time on a speaking acquaintance. Around about 1939 he was in what they call the Insurance Building up here at 15th and I Streets. I was in the Chandler Building at 1427 I Street. I used to see him there frequently, and the Mine Workers bought the building he was in and he had to get out; he had to move; so he came down to the Chandler Building, and he was on a different floor

from my office there at the time and I saw him frequently, and at that
659 time I think it was about 1939 I saw him frequently and he used
to come and visit with me in my office, and referred cases to me to
handle for him.

He was way up in years. He died in 1949 at the age of 93, Christmas Day.

So that continued. I learned that he had gone to the hospital, Doctors Hospital. I think that was in '48, about a year or maybe more, a year and a half before he died, he had just picked up and gone over there and didn't say a word to anybody about it.

He had an operation, one of those prostatectomy operations, and he sent for me and I took over his office, and all of his accounts, I collected all of his accounts. He had various bank accounts and building and loan accounts, and I put them in one bank where he was a director.

That was the Liberty National Bank. I paid his bills, wrote his checks, and then his wife was in the picture then about getting some arrangements made about his office, and the rent was going on. At that time the Mine Workers also bought the Chandler Building and gave everybody notice to move. So, his wife and I disposed of the office equipment. We gave some of it to a law school here, Terrell Law School, and she
660 took some of that home and I sold some of it, including his safe.
And I had all the papers of his office.

I arranged then to go down to the Kellogg Building at 1416 F Street, with a Mr. Linton, and moved down there. Mr. Jeffords and Mrs. Jeffords were over at Doctors Hospital and Mrs. Jeffords at that time was needing treatment for herself. So they moved out to Washington Sanitarium from Doctors Hospital, went out there, and he went out in an automobile; I don't know whether it was an ambulance-type, or not. They were out there quite a while together, both receiving treatment in the sanitarium, and I was the only one I knew of who was looking out for their affairs.

So they got out of there and went back to 2707 Hamilton Street.

He had a male nurse for quite a long time. Finally he got so he could walk around and his wife, that is, Mrs. Jeffords, wanted to know if he could come down to the office and stay, and if it would be good for him to get out of the house. So he came down there and had his name in the phone book, and had him a desk, and he used to come down there nearly every weekday for a few hours, and he had a lawsuit coming up that he had previously scheduled, and he came down to court with me on it.

We settled the case when it was called.

661 So, that is about the only business relationship with him.

Out at his house, I used to go out there, when he was sitting around. He had a relapse. His operation had not been successful. So he had a relapse and a decline, wasted away.

Q. Now, Mr. Bird, will you state whether or not your friendship and association was continuous until the death of Mr. Jeffords and the death of Mrs. Jeffords? A. Yes; it was. When Mr. Jeffords died, Mrs. Jeffords, his widow, engaged me to look after her interests in his estate.

Q. And you did that? A. I did. I entered my appearance in the court here.

Q. Now, Mr. Bird, did you transact any business for Mrs. Jeffords after the death of her husband? A. Oh, yes, I did.

Mrs. Jeffords had roomers in her house. Some of them had been there a long time, and it was a sort of a stabilized house.

Then there were some changes. Persons moved, and different changes.

662 She asked me to look after her income taxes. I did the first year, and then I declined, -- I told her it would be better for her to get some tax expert or somebody who had familiarity with the tax laws.

She was an executrix in an estate. Someone who lived down in Texas.

Q. Speak louder, please.

Some woman whose home was in Texas, Mrs. Jeffords was the executrix of her estate -- McGuinneas was the name -- I am sure -- so I represented Mrs. Jeffords in that case in this court.

And she had some business in checking up. Mr. Jeffords was interested in some oil land in California, which I endeavored to unravel for her. I did business with the bank for her.

And she had an accident, and I took care of that, and had her physically examined by a doctor at that time, and I was acquainted with her doctors as of that time.

Q. Now, Mr. Bird, did there come a time when Mrs. Jeffords was stricken with her last illness? A. Yes. I was there.

Q. When was that, approximately? A. Well, I learned about it on the 12th day of October. I must say that --

663 Q. That was 1959? A. 1959.

Prior to that time, Mrs. Jeffords asked me to keep in close touch with her. She felt that she was subject to some kind of a heart attack or dizziness, which I did. I came over there every Saturday, usually, and then she would be dressed up to, and would see me in the front room.

Q. When was this? A. That was ever since Mr. Jeffords died until the Saturday before she took to her bed in her last illness.

Of course, in the meantime Mrs. Jeffords may have had some trips out of town. She went to Mexico one time, and went down on the steamer Delta on the Mississippi, went over to Atlantic City, and would always just take someone with her. And in those times she gave me letters of instruction that everything was in the bank if anything should happen to her. I have the letters.

Now, also, I must say that she was hospitalized once in Washington Sanitarium for a broken shoulder. She had sustained a fall. Another time she sent for me to come over there in the middle of the night to bring her some Ex-Lax. I did.

664 I got it out of an all-night drugstore, and got her a doctor and a nurse -- Doctor Hadley, way over across town -- and some of her friends disapproved of her having that doctor. I didn't know why. But she later

went over there in the hospital and stayed for ten days or so and was completely examined.

I took care of her and her accounts with these doctors and with the hospitals.

I must say also that during all of this time I had never seen anything whatsoever of Estelle McCord. I saw her once there at Mr. Jeffords' funeral, and I saw her on the 12th day -- the next time was the 12th day of October, 1959. That was ten years, or almost ten years.

Q. Did you say that the first time you saw her was at the funeral of Mr. Jeffords? A. Yes.

Q. And what year was that? A. That was in '49. Out at Lee's funeral parlor.

Q. Mr. Bird, did you go to the home of Mrs. Jeffords on the 12th of October 1959? A. Yes, I did. I received two phone calls; each from Mrs. Souder. The first one was that Mrs. Jeffords wanted to see me, and the next was she wanted to see me right away. So I wasn't long before I got over there.

665 Q. Now, Mr. Bird, will you tell us what assistance you gave to Mrs. Jeffords between the 12th of October 1959 and the date of her death December 25, 1959? A. Well, I was over at her house, I would say daily. There were some days I didn't get there but I was over there practically daily, and I had to get letters; I had to establish credit for the laundry and for the dairy and for the groceries, and I had to arrange to pay the help. And there was one of the drugstores wouldn't -- I know that is one thing, they wouldn't stand credit on. I didn't know why. But I paid the utilities and had the plumbing fixed and I took care of things around there generally.

Q. Now, did there come a time when arrangements was made for you to act for her in the capacity of or under a power of attorney? A. Yes. I will tell you about that.

Q. When did that occur? A. In April of 1959 Mrs. Jeffords asked me to prepare her power of attorney for me. I did that. I had a form

there. She says "I don't want a form; I want you to just take care of my rooming house business accounts and my moneys, and collect everything, just like you did for my husband.

So I prepared one. I have it in the file, a copy of it I mean, and
666 I gave it to her and she said, "This is exactly what I want."

So I told her it would have to be signed by her and notarized.
But I never saw it again.

Then she had a big nurse there, a large woman, whose name we have here as a witness, by the name of Rochambeau, who is a graduate nurse and a registered nurse over in Maryland who was obtained by Mrs. McCord out of some registry here.

I had never seen her before. And I saw Mrs. McCord there on the 12th, the day I came over. Mrs. Jeffords, I knew, had had a trip to Doctors Hospital and the X-ray Department down there, through a Doctor Richwein, that Mrs. McCord had obtained for her.

I never saw or had never seen Doctor Richwein.

I knew Mrs. Jeffords' doctor had been Doctor Oliver B. Thompson.
In addition to that, Doctor Hadley.

THE COURT: How do you spell that? Hagley?

THE WITNESS: Hadley. H-a-d-l-e-y.

And he is the man who brought her a nurse over there once to stay with her nights, and also she went over to his hospital.

I didn't want to interfere with Doctor Richwein who had been brought
667 there, although Mrs. Jeffords did have a sign up, and I have it here, a cardboard sign in her telephone booth of a Doctor Yater, in case of emergencies, and the telephone number was on it.

Now, I inquired about this Doctor Yater and he had never treated Mrs. Jeffords but he had treated a roomer who had a heart attack in her house. But Mrs. Jeffords told me about him. She says, Call him. He is a man who will come at once." That means he would come when called.

11 she knew about him. He had been there.

So I made no change or no suggestion of any change about Doctor Richwine. He was a big, impressive-looking man, and since Mrs. McCord had brought him there and I had every reason to believe that Mrs. McCord was a trusted person.

So that went on.

Mrs. Jeffords asked me about his bill, the first bill he rendered, which was \$90. Doctor Richwine had taken her down, and X-rayed at the hospital, before that and his bill was \$20. I saw that later on in a check.

Mrs. Jeffords protested about the bill being \$90. I had nothing to say about it.

Had no money to pay anybody there. The bank account, Mrs.

668 Jeffords couldn't sign the check and the bank had -- she could write some kind of a scrawl there and the bank knew about her, she was well acquainted down there at the bank. They allowed some money to be transferred.

And under those conditions I went down to the bank and asked him for power of attorney, if something would have to be done, and saw a Mr. Sherman, Al Sherman down at the main office.

So he fixed up some papers and we had the power of attorney executed for her, for me, on the 19th day of October.

Q. And when, where was that executed? A. That was executed at the house in Mrs. Jeffords' bedroom, and Doctor Richwine was there, Estelle McCord was there, and a Mrs. Sokol from the bank was there, and there were numerous people around there at the time.

I might say before that, slightly before that, Mrs. Jeffords had a, I think it was on the 18th, she had a collapse in the bathroom, and there was nobody there but this big nurse who wasn't very able, I mean she had some physical -- she was stout but not very strong. And my wife, who is a little woman -- who will be here -- couldn't do anything with her, couldn't get her out of the bathroom. Mrs. Jeffords would weigh
669 only about 125 pounds but they couldn't handle her.

So my wife went out on the street and got a man to come in and lift her out into what they call the solarium, and wanted to put her on a

bed there, and I had been called to come over. I got over there and I lifted her from that bed over into her own hospital bed.

And Mrs. Jeffords was not out at that time, as to her mental condition. She was keyed up.

And Mrs. McCord was not around there. There was nobody else there but this one nurse, and the house was apparently vacant.

So the bank fixed that power of attorney up there for that bank on their forms. I knew they have statutory requirements and they have forms to meet the statutory requirements of banks.

Now, before that time I had had a conversation with a Mr. Sivdal, Raymond Sivdal, who had come in there from the West Coast shortly before Mrs. Jeffords had to be taken from her bed, had to take to her bed, and approached me. This was in the presence of Mrs. McCord, Mrs. Fleming, and a nurse, and I don't know who else was up there, and asked me, he says, "I fixed you up a power of attorney. You are Mrs.
670 Jeffords' attorney now."

I said, "Well, I have been Mrs. Jeffords' attorney, I think, for quite a long time." And I said, "What do you mean by fixing up her power of attorney? I don't want Mrs. Jeffords to sign anything. She is not going into any sort of a business deal in this condition."

And I said, "What have you had her sign already? I want to know; have you been having her sign any papers?"

He said he wanted to buy the house, and said I could be influential in having Mrs. Jeffords sell him the house.

So I says "Mrs. Jeffords has always told me that she is expecting to live here until she dies. She has asked me not to let anybody move her."

So I told him, now, I said, "I want this in writing from you that you have not had her sign any other papers, or I am going to look into it carefully."

So he gave me a writing. He was a typist, he was a stenographer, and he wrote -- I have the letter he gave me. It is right amongst the papers there -- certifying that he had not had Mrs. Jeffords sign any papers.

So I spoke to those women upstairs who were listening in on that. Mr. Sivdal went upstairs to where he had a typewriter, and they told me, "Well, Mrs. Jeffords says that Mr. Sivdal means nothing to her and
671 she doesn't have intentions of signing anything for him", and I made it clear to them, I reiterated that I didn't want any business attempted with Mrs. Jeffords, any serious business.

Mrs. McCord was there and a Mrs. Mae Fleming was there.

So later Mr. Sivdal moved and I understood they had given him some books to take with him in his automobile, and went back out to the West Coast.

Q. Now, Mr. Bird, after this power of attorney was executed, was that accepted by the bank? A. Well, I might state, I should state at that time -- I haven't given the details of that -- Mrs. Sobel, who was a notary public, and whom I had not seen before, ever, was up there and knew Mrs. Jeffords quite well, and had her notarize the paper and also at that time Mrs. McCord was in and out of the room.

Doctor Richwine was in there and in and out of the room. And they explained it to her and she said that is what she wanted to do, that Mr. Bird was to have charge of her affairs and if anything happened to her he was to take her to Shreve, Ohio, for burial.

Then that brought up a question, and Mrs. Sobel said, "You know, he has to go to Ohio." She had specified she wanted to be buried at Hines.

672 "You will have to have some money to take her out to Ohio, to another funeral parlor out there, and will have to have some money available for that as well as for the household."

So they fixed up that power of attorney and Mrs. Jeffords reached somewhere around the bed and she said "What's the matter with this?"

"Why do I have to notarize any form?"

There were several papers there to be signed for the bank.

Mrs. Sobel explained to her that the bank had to have its own forms for powers. And she said, "Now, have you got everything the way you want it", and she said "Yes, I have," and she says "How much will it take

to get me out to be buried out in Ohio", and I told her I didn't know. She had her burial lot out there all set up with the tombstone and everything. Now, I didn't have those papers at that time; they were in the cedar chest apparently. I know Mrs. McCord got them for me out of the cedar chest, about her burial lot out in Ohio. She had a burial lot out in Maryland with perpetual care, and another lot out here where Mr. Tracy L. Jeffords was buried. Her first husband was buried in Shreve, out near Wooster, Ohio. She was going out there.

673 Q. Well, Mr. Bird, you was able to draw from her funds under this power of attorney to pay bills? A. Yes.

Q. What bills did you pay? A. I paid the nurses, I paid the doctor; I paid the grocer, the cook, the laundry, the dairy. I don't remember what-all else. All those incidentals, I had to have it itemized and all.

And I got petty cash there for the nurses to have in a bureau drawer in case anything came there.

There was one time a drugstore, or some prescription came there and Ellie, or Miss Gill, that is the maid, who had come back from Virginia, wouldn't pay them. She had money but said it was too much.

She had her own money, I mean. So I provided some change there.

Then I got a cook who was also, who also I utilized her for helping out these nurses. These nurses were -- some of them weren't able-bodied, and the cook was, and she walked, she would get Mrs. Jeffords up and walk her around the house.

I think Mrs. McCord had an arrangement there that she, with the
674 doctor, the doctor was having wangles with the nurses and the doctor wanted her to be put in charge of the nurses.

So I told the doctor, I says, "I thought that she is a patient now, that you should provide the nursing service for her."

Well, they explained that they wanted her to go to a rest home, and Mrs. Jeffords resisted it. I mean, she really would fight them to the last ditch on that.

Mrs. McCord had the house under purchase up on Garfield Place, and

had just moved into it, and it was about two or three blocks away, and they wanted to take her up there. Mrs. Jeffords wouldn't go. She said she had seen the house and didn't like it, and under no circumstances was she going to be moved, and if there was any question about money she thought she had the money, but she would use up the house she was in to the last brick.

So I transferred money from the savings account over to the checking account. I had a stamp made for my power of attorney, and I have every account listed of every item I spent.

And I have checks to show for it. I paid these nurses.

Now, there was one nurse there, Miss Cole, who had some training, apparently, but she was not able-bodied. She had some kind of a slipped disc, and she was there from, I think November 9 down to December 17. This was all 1959. When Mrs. Jeffords collapsed, or went limp, and she left because she couldn't handle her, couldn't lift her, there was quite a lot to-do around the house there about Mrs. Jeffords not having anybody to take care of her, and that is when this Mrs. Michalka came there. And that was correct that she was there on the 17th day of December.

Mrs. Jeffords in that time was absolutely limp and helpless.

I have the doctor's certificate to show, I have it here in my pocket.

Now, that chart has been somebody -- that has not been in my possession, that nurse's chart that shows the last few days, of what Michalka was doing, and giving demerol, and so forth, but this chart, this doctor's certificate goes back farther.

MR. LASKEY: If the Court please, I object to any reference to that certificate.

THE COURT: Sustained.

The doctor's testimony is the best evidence.

MR. LEEMAN: That is not the prescription we have in here as an exhibit, is it?

THE COURT: He said it was a certificate from the doctor as to the condition.

THE WITNESS: It is the doctor's certificate.

MR. LASKEY: If the Court please, I object to the witness' testimony about this certificate.

THE COURT: If you have something to offer, exhibit it to counsel and then I can look at it. I don't know. There is vague testimony and then objections are equally vague.

BY MR. LEEMAN:

Q. Mr. Bird, what is that? A. This is a certified death certificate of Mrs. Jeffords' death.

MR. LEEMAN: I will offer that.

THE COURT: Let Mr. Laskey see it.

Have you ever seen it?

MR. LASKEY: No, Your Honor.

(Handed to counsel.)

MR. LASKEY: No objection.

THE COURT: Have it marked, give it the next number, Defendant's next number, exhibit number, and it will be received. Mr. Leeman, will you read it to the jury?

677 THE CLERK: Defendant's Exhibit No. 6.

(The document referred to was marked Defendant's Exhibit No. 6 for identification and received in evidence.)

MR. LEEMAN: This says: "District of Columbia, Department of Public Health, Certificate of Death."

The date, "December the 25th, P. M., 2:54.

"File Number 599802."

"Washington, D. C.

"Place of Death, 2707 Woodley Road, Northwest."

And above that is the printing matter that says:

"Name of Hospital or Institution; if in a hospital give the street address."

That is printed on there.

"Length of stay" -- I don't see any entry for that.

THE COURT: Keep your voice up, please. You see, I must hear you, too.

MR. LEEMAN: Pardon me.

"State: D. C.

"City, Town or Location: Washington.

"Street address: 2707 Woodley Road, Northwest.

"Residence: Inside the city limit? Yes.

687 "Residence on a farm? No.

"Name of deceased: Laura Leese Jeffords.

"Date of death: December 25, 1959.

"Sex: Female.

"Color or race: White.

"Married, never married, divorced"--

And the check mark for that is "Widow", after the printed word "Widow".

"Date of birth: First month, 9th day, 1870.

"Age; the last birthday: 89.

"Father's name: Asper Dodge.

"Mother's name: Laura L. Pence.

"Was the deceased ever in the armed forces: No.

"Social security number: No.

"Informant: James F. Bird, attorney.

"Cause of death: Enter only one cause per line.

"Death was caused by: Immediate cause: cerebral thrombosis.

"Interval between onset and death"-- It has "Today".

Then over that it says "Conditions, if any, which gave rise to the above cause, stating the underlying cause last".

679 And that says: "Cerebral arteriosclerosis."

And the time is, "About one year."

"Was autopsy performed", and the check mark is, "No".

Then it says, "injury occurred. Was it at work or not at work, or place of injury".

All of those things are blank with a line drawn through them.

"City, town, location, county and state".

Then "I attended the deceased from" -- looks like the 15th of March 1959 to the 25th of December, 1959.

"The last day saw her alive" -- it looks like the 25th of December 1959.

The signature is "A" -- I can't tell whether it is "W" or "H", "Richwine."

His address looks like 5522, looks like Weder, could be Western Avenue.

THE COURT: Do the best you can. If you can't read it, say you can't read it.

MR. LEEMAN: It has "Chevy Chase 15, Maryland."

THE COURT: Is the rest of this at all significant? Do you care whether his address is given or not, Mr. Laskey?

MR. LASKEY: No, Your Honor.

680 THE COURT: Very well; then skip it if you can't make it out.

MR. LEEMAN: Well, the only important thing is that the undertaker was S. H. Hines, H-i-n-e-s, 2901 14th Street, and that she was buried in Oak Grove Cemetery, Shreve, Ohio, and the date was the 12th month, 28th day of 1959.

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681 MR. LASKEY: May we approach the bench?

(At the Bench:)

MR. LASKEY: At the start of the trial Your Honor indicated you might have other things to attend to and I have a motion set for tomorrow and I wondered if you would be here at 10:00 o'clock.

THE COURT: No; I have a mortgage on you for tomorrow.

I have to select a jury for October, on Thursday. That is the only thing I know as of now that I will have to do which will interrupt this trial.

MR. LASKEY: Fine. I will arrange to have the other matters taken care of.

THE COURT: Yes.

MR. LASKEY: Now one other matter:

Judge Sirica has asked me and another counsel in another case to be in his chambers at 4:00 tomorrow. I told him I was in trial but I thought Your Honor would adjourn about that time.

THE COURT: Yes. All right.

682 MR. LEEMAN: Your Honor, when I read this death certificate, this fine print down there is important. That says "Interval between onset and death, 7 days", and I would like to read that to the jury.

THE COURT: Did you read something else?

MR. LASKEY: Yes. He read "Today".

THE COURT: I see.

MR. LEEMAN: Yes, I think I said "Today."

THE COURT: Certainly. Make the correction and explain to them it is in very fine print and sometimes almost illegible.

MR. LEEMAN: Yes, sir.

(Open Court:)

THE COURT: You may make that announcement to the jury.

MR. LEEMAN: Ladies and gentlemen of the jury, when I tried to read this death certificate, in the fine print, after the "Immediate cause of death", which was cerebral thrombosis, in real fine print it says, "Interval between onset and death", and it is marked there, "7 days".

I think I just said "Today", or something, when I read it. But it is very clear that the interval between the onset of the cerebral thrombosis and death was seven days.

683 THE COURT: All right, sir.

Thereupon,

JAMES F. BIRD

resumed the stand, and, having been previously duly sworn, was examined, and testified further as follows:

MR. LEEMAN: At this point, Your Honor, I would like to get some papers in evidence.

DIRECT EXAMINATION - resumed

BY MR. LEEMAN:

Q. Mr. Bird, I will show you a paper and ask you what that is.

A. This is a paper which was handed to me by Mrs. Jeffords on the 19th day of October, 1959, in the presence of Mrs. Sobel and at the time the power of attorney of the bank was being prepared.

This is the paper I alluded to that Mrs. Jeffords produced and said --

THE COURT: Have it marked and show it to counsel. Maybe there will be no objection, and then you can read it to the jury.

THE CLERK: Defendant's Exhibit Number 7.

(The document referred to was marked Defendant's Exhibit 7 for identification.)

684 MR. LEEMAN: It has been marked before deposition.

THE COURT: Oh, no; it has to be marked at the trial.

MR. LEEMAN: I didn't want him to get it confused.

THE COURT: No; mark it fresh.

Show it to Mr. Laskey.

MR. LASKEY: No objection, Your Honor.

THE COURT: You may read it to the jury. It has been received.

(The document heretofore marked Defendant's Exhibit 7 for identification was received in evidence.)

MR. LEEMAN: Up at the top in pencil is "Defendant's Exhibit Number 1" --

THE COURT: No; it is number 7, isn't it?

MR. LEEMAN: Well, this was done when one of the depositions was taken. I was going to explain to the jury that was not important to this paper so there would be no mistake about it.

THE COURT: All right.

MR. LEEMAN: "2707 Woodley Road, Northwest, Washington 8, D. C., October 16, 1959.

"To Whom it May Concern:

685 "It is my wish that Mr. James F. Bird, of 3616 16th Street, Northwest, Washington, D.C., take charge of all my personal and financial affairs during the period I am incapacitated. Should I not recover from my present illness, and expire, it is my desire that the said Mr. James F. Bird continue to have charge until my will is read. I desire that my body be taken to the S. H. Hines Funeral Parlor in Washington, D.C., and thence to Shreve, Ohio, in care of Paul Morgan, Funeral Director at Shreve, Ohio."

Signed, "Laura L. Jeffords".

Typewritten, "Laura L. Jeffords."

"Witnessed: Raymond A. Sifdol, 244 West 12th Avenue, Eugene, Oregon.

"Wray Rochambeau, 2745 - 29th Street, Northwest, Washington, D.C."

And there is a name at the bottom which apparently has nothing to do with the paper.

I ask that this be admitted in evidence.

THE COURT: I admitted it. You have read it to the jury.

BY MR. LEEMAN:

Q. Mr. Bird, this name at the bottom, do you know what that is?

686

A. Yes, I do.

That was one of the men from Hines Funeral Parlor who came there

and removed the body, and at the time that was written, just before that he had tossed a 3-glass ring on the table between Mrs. McCord and me. And Mrs. McCord picked up the ring, without saying anything, and I asked the gentleman if he would write his name on this piece of paper which I had there at the time. That is his name, Womeldorf, W-o-m-e-l-d-o-r-f. That is all he wrote.

Q. And he was an employee of the Hines Funeral Home? A. Of the Hines Funeral Parlor and the ring had been on Mrs. Jeffords' finger.

Q. Mr. Bird, I show you another paper, an envelope, and ask you to identify that. A. Yes. I identify this as one of the certificates made by Mrs. Jeffords.

THE COURT: Now what is the status of this? You have shown it to counsel. Do you now offer it in evidence?

MR. LEEMAN: Not yet I haven't, Your Honor. I will be glad to show it to Your Honor.

THE COURT: I wondered what the status of it was. I don't know
687 what goes on down there between you. He looked at it and handed it back. Where is it now?

THE CLERK: Defendant's Exhibit Number 8.

(The document referred to was marked Defendant's Exhibit No. 8 for identification.)

THE COURT: Do you offer it in evidence?

MR. LEEMAN: I am going to, as soon as I get him to identify it.

THE COURT: All right. Go ahead.

BY MR. LEEMAN:

Q. Can you identify the handwriting on that, Mr. Bird? A. Yes. That is the handwriting of Mrs. Jeffords, and it is -- there is no date on it but it is several years before her last illness.

MR. LEEMAN: Now I offer this in evidence.

THE COURT: Is there any objection?

MR. LASKEY: I object to it as irrelevant. I don't know what the purpose of the offer is.

THE COURT: I haven't seen it. May I look at it?

(Handed to Court).

THE COURT: What is the relevancy, Mr. Bird?

688 MR. LEEMAN: I would say this, Your Honor, that Mrs. McCord is not mentioned among those people at that time that she wanted to be sure were notified.

THE COURT: It is addressed to Mr. Bird?

MR. LEEMAN: That is right.

THE COURT: Do you still object?

MR. LASKEY: No, Your Honor, if that is the purpose of it.

THE COURT: It will be received.

Will you read it to the jury?

(The document referred to, heretofore marked Defendant's Exhibit 8 for identification, was received in evidence.)

MR. LEEMAN: The envelope says:

"Mrs. T. L. Jeffords, 2307", looks like on the envelope -- I presume that is 2707, but it looks like the pen slipped.

" -- Woodley Road, Northwest, Washington, D.C.

"Mr. James Bird, 3636 - 16th Street, Northwest, Washington, D.C., the Woodner."

And it says, "In case of accident or death, Laura L. Jeffords, 2707 Woodley Road, Northwest, notify Doctor Paul, Wooster, Ohio, 689 203 North Berne Street; Mrs. Hugh Taylor, 5420 Connecticut Avenue, Northwest, and Miss Ellie Gill. Notify Mrs. Anna Simonson and Mrs. R. L., 623 Colonel Drive, Colonial Heights, Virginia; Mrs. Dorothy Yoger; notify Mrs. Patricia Olds, 2803 Ortner Place, Northwest, Apartment 305."

BY MR. LEEMAN:

Q. Mr. Bird, I have another paper to show you. Will you tell us what that is? A. Yes. That is the power of attorney which was prepared by the bank for them to -- for Mrs. Jeffords to give me power of attorney.

That is the authorized signature.

That is a photocopy of it.

Q. That is a photocopy of it? A. Yes.

THE COURT: Has it been marked?

MR. LEEMAN: No, Your Honor.

THE COURT: Have it marked.

THE CLERK: Defendant's Exhibit Number 9.

(The document referred to was marked Defendant's Exhibit 9 for identification.)

THE COURT: Do you offer it in evidence?

690 MR. LEEMAN: Yes, Your Honor.

THE COURT: Any objection?

MR. LASKEY: No objection, Your Honor. Mr. Leeman asked me if he could use a photocopy instead of the original and I have agreed.

THE COURT: You may read it.

(The document referred to, heretofore marked Defendant's Exhibit 9 for identification, was received in evidence.)

MR. LEEMAN: The officer of the bank who has charge of these is under subpoena and we will probably have the original here.

THE COURT: If he has no objection to the photocopy, that is all we need for evidence.

MR. LEEMAN: That is all we need; yes.

THE COURT: Read it to the jury.

691 MR. LEEMAN: "Power of Attorney. Know all men by these presents, that I, Laura L. Jeffords, have constituted and appointed and by these presents do hereby constitute and appoint James F. Bird of Washington, D.C. my true and lawful attorney, for me and in my name and stead, to sign my name to checks, including checks to his own order, for the withdrawal of any funds now or hereafter on deposit to my credit with the American Security and Trust Company of Washington, D. C.; (b) to endorse

my name on all checks, notes, drafts and other negotiable paper belonging to me or made payable to my order for any purpose whatsoever, and generally to do and perform any and every lawful act and thing necessary to effect the same, with full power of substitution and revocation, hereby ratifying and confirming whatever said attorney or substitute may lawfully do in the premises.

"The said trust company shall be under no obligation as to any checks so signed or paper so endorsed by said agent to make inquiry as to whether or not said agent, committing a breach of his duty as such agent; and I hereby release the trust company from any liability to me by reason of any breach of trust on the part of said agent.

"Witness my hand and seal this 19th day of October, 1959."

"Signed, sealed and delivered in the presence of Rae Rochambeau and Emma Cole."

It is signed, "Laura L. Jeffords", and her mark is on there.

And the lower part is -- there is a notary's seal on the original

692 and it gives the date that the notary's commission expires:
September 14, 1962.

"Authorized signature of Laura L. Jeffords by the attorney, address 3636 - 16th Street, Northwest, Washington, 10, D. C.; telephone ADams 45136, October the 19th, 1959, Attorney at Law."

THE COURT: You asked that it be received in evidence?

THE COURT: You may mark it as received, Mr. Clerk.

BY MR. LEEMAN:

Q. I show you another paper, Mr. Bird. A. Yes, sir.

Q. And what is that? A. This is the waiver of privilege that Mr. Laskey and I were controverting about here earlier.

MR. LEEMAN: You have seen this?

MR. LASKEY: I have seen it.

THE COURT: Do you offer it in evidence?

MR. LEEMAN: Yes, sir.

THE COURT: Have it marked. Then I will hear if there is objection.

MR. LASKEY: No objection.

693- THE COURT: It will be received.

694 THE CLERK: Defendant's Exhibit Number 10.

(The document referred to was marked Defendant's Exhibit 10 for identification and received in evidence.)

THE COURT: You may read it to the jury.

MR. LEEMAN: "United States District Court for the District of Columbia. Estelle S. McCord, Plaintiff, versus James F. Bird, etc., et al., Defendants. Civil Action No. 1746-60.

"Waiver of Privilege.

"We, James F. Bird and Jerome Keith, co-executors of the estate of Laura L. Jeffords, deceased, hereby waive the privilege in so far as our attorney, Charles B. Sullivan, Jr., is concerned, allowing him to tell anything that he knows or which has come to his attention in so far as the estate of Laura L. Jeffords is concerned."

Signed, "James F. Bird and Jerome Keith."

BY MR. LEEMAN:

Q. Mr. Bird, I will show you another paper and ask you what that is. A. This is a paper which was given to me by Raymond S. Sifdol at my request. He typed that, October 18.

695 Q. And what is that? A. That is the picture of Mr. Raymond S. Sifdol.

MR. LASKEY: If this is being offered, this is the first time we have seen it.

If it is being offered, my objection would be on the basis there is no relevancy to any of the issues in this case.

THE COURT: May I see it?

(Handed to Court.)

THE COURT: I don't see its relevancy.

Will you explain that, Mr. Leeman?

MR. LEEMAN: Yes, Your Honor. That will develop. This man was a roomer at the house at the time and he was a typist, and he was typing different papers for Mrs. Jeffords, and Mr. Bird requested him not to write or handle any business transactions for Mrs. Jeffords.

THE COURT: To show Mr. Bird's interest in the decedent; is that what it is for?

MR. LEEMAN: That is correct, Your Honor.

THE COURT: Do you still object?

MR. LASKEY: Yes, Your Honor.

THE COURT: Overruled.

Read it to the jury.

696

THE CLERK: Defendant's Exhibit Number 11.

(The document referred to was marked Defendant's Exhibit No. 11 for identification and received in evidence.)

MR. LEEMAN: May this photograph included with it be a part of that or mark it separately?

THE COURT: It should be marked separately.

Do we need his photograph?

MR. LEEMAN: I don't think so, Your Honor. Let's skip that.

This is on a photostat paper or is a photostat of it:

"Sheraton Park Hotel, Washington 8, D.C., October 18, 1959.

"To Whom it May Concern:

"The undersigned wants it thoroughly understood that other than pure friendship through over 20-odd years of acquaintance, he had no interest in nor does he want anything through gift, sale or otherwise, from Mrs. Tracy L. Jeffords. He further goes on record to say that he has written no paper concerning anything for himself.

Signed, "Raymond S. Sifdol, Major, 0175443, USA Retired."

697

BY MR. LEEMAN:

Q. Now, Mr. Bird, before the noon recess we had gotten down to the time when Mrs. Jeffords had taken sick.

Will you tell us about your visits to Mrs. Jeffords between October the 12th and the date of her death? A. Yes. My visits were almost daily; sometimes twice a day, but not necessarily every day. I was in and out of there, and I was keeping, as she requested, in close touch with her.

Q. Do you recall what occurred while you was at the house on the 19th of December? A. Yes. On the morning of the 19th of December I was to the house, downstairs. Mrs. Jeffords was upstairs, had been in a, you might say, flaccid state of physical condition, no control of any of her muscles.

Mrs. McCord came down and asked me, she says, "I think that she is very close to death's door; I think the cedar chest should be protected; I would like to take it to my house and keep it safe."

I said, "I think that is a very good idea."

She had been asking me what was in it. I didn't know what was in it. I told her, I said, "I understand she has some interesting diaries, and perhaps silverware, that Miss Gill" -- that is the maid -- "used to
698 put the silver in there after parties."

So I told her, "I think it would be a good idea; can you do it?" And she said, "Yes", she thought she could do it.

So I didn't hear her make a telephone call. There was a phone upstairs and one down and I was downstairs. In perhaps ten minutes, a very short time, her son-in-law came. That is the Mr. Collier.

He went upstairs and the next thing I knew he came back down and said it was too heavy. Well, I was only fresh out of the hospital and I was not allowed to lift; in fact, I had to muster up some strength to walk. From the hips down my legs weren't very good. So then there was a little lapse of time there and the first thing I know Mr. McCord came.

I had met Mr. McCord a couple of times, I think. And he was in

sports clothes -- both Mr. McCord and Mr. Collier were in sports attire. So he went upstairs and in a little while it sort of stuck on the stairway where there is a little landing and it turns a corner, and their cheeks were puffed out red and they were evidently stuck.

I didn't know the chest was that heavy; I didn't know what was in it. So they struggled along and took it down out the door, and in the trunk end of an automobile which was parked out in the street.

699 While Mr. Collier was there, I had asked him if he could at the same time take a lion's picture, which was on the wall, -- I said, "I want to acquire that", so he lifted it up with one hand and took it off.

I have a picture of that picture, if you want to see it.

So they went off in their car -- they went off in their automobile and I didn't hear anything more about it. I understood Mr. McCord went over to get some of the things out of that, Mrs. Jeffords' covering, a nightgown, but Mrs. Jeffords was absolutely out. She didn't need any clothes or anything. I mean, she was really stretched out there.

So there was some stirring around and that is all I remember about that until Monday.

On Sunday the preacher came, with a beautiful, what do you call it, red flowers -- poinsettia. There was nobody there but me, and I told him it was a beautiful flower, but that Mrs. Jeffords would not recognize him. I said, "She is completely gone now," and I said, "There is no use to take it up," so he didn't take it up. So he went up and had one look at her and came back. Then I persuaded him to take the flower back to somebody that could see it.

700 So, on a Monday morning Mrs. McCord was there and --

Q. This Monday would be the 21st of December, 1959? A. Yes; the 21st of December, and Mrs. Jeffords was still alive. The nurse was expecting her to expire any time --

MR. LASKEY: I object to that, if the Court please, as to what the nurse expected.

THE COURT: I sustain the objection.

THE WITNESS: Mrs. McCord asked me to go over to her house

with her and get some papers that she thought I ought to have for the preparation of the estate. So, she had her car out back where she kept it parked at different times, and I went out with her and got in her car and she drove me down to her house.

That was the little house; I had never even seen it from the outside nor the inside before that time.

We went down some steps to what they call the "rec" room -- I have heard it called that here. It was practically empty. There were no furnishings in it but a card table, and there was a cedar chest and a couple of chairs, something of that sort.

It was a practically vacant room and it all was hardwood floor, and everything shining spic and span.

701 So she put out the card table, a little flimsy card table, pulled up a chair. The chair she gave me to sit in was fairly substantial. I sat down. She unfolded this chair, another chair, and sat down on that and that collapsed and she had a very hard fall, it sounded hard; and it was hard.

So I got up and almost fell down trying to -- I was not able to assist her because she was up and on her feet.

And I believe she took a tray out of that chest, unlocked it. I am pretty sure it was not put on the card table because I don't think the card table would sustain much of the weight. I don't know where it was put and I don't visualize everything that was there at that time.

So she said, "I have gone over this and I think you will need these papers," and I said, "Mrs. McCord, I don't even know for sure what condition the estate is going to be in, whether I am going to be handling it, or what is the fact." I said, "I will have to see."

I said, "I have known people who have made their own wills who didn't have a will when it came to it."

So she says, "You are it, all right; you are it, all right."

THE COURT: "You are what"? What was it she said?

THE WITNESS: "You are it, all right." "You are it."

702 Meaning, I suppose, that I was the one that was supposed to handle the estate.

So I had no valise or briefcase or anything like that with me, and I remember she showed me, she said, "Let me show you what is here in the bottom of the chest," and that involved getting up out of the chair and stooping over, and I said, "Well, I don't think it makes any difference at this time what is in the bottom of the chest, as for now it will keep."

So she said, "Down in the bottom there is a case of old silver, made out of silver dollars, and they are very antique, and nobody uses them," and she had a billfold there, such as -- I don't know what they call these, but it is like you carry in your hip pocket, they fold up -- and she says, "Here is a billfold."

It was black and not brand-new but it looked as though it had been in recent, fresh use. She said, "It has \$138 in it. I have counted it," and she says, "Do you want it?" I says, "No; keep it here."

So there was another, a nice-looking book there in leather-bound, it was poetry, and she held that out and I didn't ask for anything, I didn't even look at it, I didn't want to handle it. I just wanted to get out of there as soon as I could.

703 Then on this table she had assembled, or not assembled at all but loose packages of papers in the large envelopes I would say about this size (indicating), about that long and about that wide such as we mail legal papers in -- several of those. And there was a purple leatherette -- it wasn't a pocketbook, it was something like on the nature of a pocketbook, or a file. And she showed me in that, it had a lot of these daguerrotype pictures, Mrs. Jeffords' birth certificate, and she had three different burial sites, one in Shreve, Ohio; one over in Baltimore; and they own or still have some lots over there in Baltimore, and also out where Mr. Jeffords was buried she has a little burial site out there, and perpetual care, all those places.

And pictures, many pictures, mementoes, and little things. She had those in this purple leatherette case. Had a gold key on it.

So I took that and put it out there; and that is the size of it. I took those papers which she handed me and put them in one -- tried to put them all in a big envelope. I think I had two packages when I left there, small packages. And I am sure that the total of it wouldn't take up any more space than, say, that red paper container that is on that desk.

704

BY MR. LEEMAN:

Q. Is this the one you are referring to? (Indicating). A. Yes. The total of the contents of all it had from there wouldn't fill that.

So I went back with her in her car immediately. She had some other things on there at the house. She was preparing the cellar for a washing machine installation, and I didn't know about that, and I asked her if she thought that would be a good place for her mother to have a rooming house so she would have an independent place to stay.

So I said, "Mrs. McCord, you had better wait to see what the facts are going to be here."

So we hustled back there and I put all of those contents out on the dining room table, and that is the table where Mrs. McCord kept records in duplicate of the rent receipts that she got from Mrs. Jeffords' rooming house.

I think she had only three roomers; maybe four. Also all the expenses, she had that listed, such as gas, light, heat, and repairs; had those on two work sheets; and she showed me those and said, "Mr. Bird, you are going to have lots of letters to write," and that is the way the matter was left there.

I didn't know what letters I was going to have to

705

But Mrs. Jeffords had records about her family, she had a lot of very distant relatives, but I think only one first cousin; I think that was the closest; and a couple of second cousins; and the rest were remote.

So I didn't make any response to that at all.

I know I went down and helped her measure for a washing machine down in the cellar.

Now those papers stayed out on that table and I put some of them

-- I went through some of them and put some in the bureau buffet. That was where Mrs. Jeffords and Mrs. McCord used to put papers when they kept records. That is where Mrs. McCord was using for keeping her papers.

Then I gathered from the family Bible, I think the best records I could get, and I had this birth certificate, and I started to assemble what I thought would be a list of the relatives or persons who would be really notified.

I had lists of people who were to be notified, but I knew that it took blood kin or legal relationships had to be satisfied before these friends.

So I gathered those, and I didn't do anything until after Mrs. Jeffords really had passed out. I took those things over to the apartment. And again, it was --

Q. When did you take those things to the apartment? A. I think it was the day Mrs. Jeffords died or the day after she died. I think it
706 was the day after she died because the day of her death the house was very full and I didn't get much done.

Q. Now, where was Mrs. Jeffords buried? A. Shreve, Ohio.

Q. And how was the body taken there and who went with it? A. Well, I went with her. Mrs. McCord went with me. We went in a -- I bought the tickets. I had this -- my wife had this writing. Mrs. McCord asked her if she minded if she went, and my wife told her she thought it would be all right because she wasn't in physical condition to make the trip.

So that Mrs. McCord went along. I bought the ticket, and the compartment. We transferred at Pittsburgh to some other train; met the undertaker, we had wired out there up to the funeral home in Shreve or Wooster, and visited there a while with the undertaker's family, went down to the gravesite, buried the body, and everything was set up by Mrs. Jeffords in advance; it was just according to the papers I had, which I had received from the house, and some of them, I don't know how many, had been handed to me by Mrs. McCord.

707 Q. When did you return from Ohio? A. We returned -- we started to return that night. We went back on three different planes. There was snow. We had to transfer three different stops, and we arrived back in Washington next morning.

Mr. McCord was at the airport. He had been wired or telephoned by Mrs. McCord, and took me up to the Woodner, and I went to bed. That was early in the morning.

So then I asked my wife, who was waiting for me and wanting to know whether I wanted any breakfast or not -- I told her to call Charles Sullivan, and he was going to come out the next day.

But before I had my clothes on -- I was still in my pajamas -- he knocked at the door.

Now, I hadn't been talking to him about any business, but he was there, and I told him what the situation was and that there was going to be a lot of relationship here, that we had to do some advertising against unknown heirs and next-of-kin. We didn't know who they were going to be. And I turned over to him my papers.

Included among those papers I went down to -- was some papers or copies or assets Mrs. Jeffords had in her safe deposit box at American Security and Trust, which I saw for the first time ever at any time
708 was the Monday morning following Mrs. Jeffords' death.

The Register of Wills was down there, and a representative of the bank, and with the officials of the bank we opened her safe deposit box, took out the will, and read the will and a paper which was attached to it, and somebody from the Register of Wills' office started calling off, one man would call off and another would write down, the different types of papers that were in there.

Well, I started following that as closely as I could, but I couldn't keep up. My handwriting was not fast as required, so I did make a list of some of those. And I made a list, I asked them to let me -- to take enough time to find out who were the beneficiaries of the will, to get the names of the persons mentioned in there.

So I had that on a piece of yellow paper, and I showed that to Mrs.

McCord when we went out. Then that is the first time I signed up with Hines. I refused to sign any papers to Hines until I knew it was official. It looked to me as though it was a proper will. I considered it a proper writing. So I went out to Hines and signed up, and paid them their expenses incident to the Ohio, the Shreve transportation, except they would wait for their bill, the amount of it, from the estate moneys.

709 In preparing for that, Mrs. Jeffords was made acquainted and was instructed by Mrs. Sobel that for any moneys to be spent out of town it -- if we needed money it could not be handled on a credit basis out of town, she asked did Mrs. Jeffords want to give me enough money or I should have enough money to take care of the transportation to Shreve. And Mrs. Jeffords apparently understood that. She says, "Well, how much was that going to be," and someone said "\$500", or I think I said \$500 ought to see it through."

So she made a check to me personally for \$500 and it was put in the American Security and Trust Company in my name for that purpose, to get her out of Washington, to take care of expenses outside of Washington.

And that money was applied --

Q. When was that check give to you, Mr. Bird? A. I think that was the 19th day of October. That is when Mrs. Sobel was there with the power of attorney from the bank, and they asked Mrs. Jeffords did she have a will, or was her will satisfactory, and she said it was, she was not going to change it. If they didn't like it, they could fight over it after she was dead. She had been asked to change her will.

710 She asked me did I think she should scratch out the names of the persons who had died.

There were some names in there, two or three who had passed on since the date she made that will in 1951.

I told her I thought it was a poor policy to make any scratches or to butcher it up. I said, "The proper thing to do is to make a codicil to the will."

She knew that. She had had lots of experience in the legal office of the government.

Q. Where did she work for the government. A. Well, I think she worked for the government ever since she was a girl, with the Veterans Administration, and before that with the Pension, what they call the Pension Office.

She went back in during World War I. She had been retired before that, I think, and went back in government, in the Veterans Administration.

Q. Now do you recall the date that you first saw Mr. Sullivan?

A. How do you mean?

Q. After the death of Mrs. Jeffords. A. The first day after Mrs. Jeffords' death was the time he was out at the apartment that morning, right immediately after I got back from this funeral trip, I
711 was what you might say pretty tired or maybe exhausted, and I gave him as full an account as I was able to at the time. I think I turned over to him the yellow sheet I had, which I had made at the bank when the Register of Wills was there with the contents of the safe deposit box.

I know I showed it to Mrs. McCord on the train and her mother was one of the beneficiaries, and that was that. I don't have that paper or copy. I am sure that I let Mr. Sullivan have it and he probably still has it. I don't know what became of it.

THE COURT: The question was, Mr. Bird, when did you first see Mr. Sullivan after Mrs. Jeffords' death.

THE WITNESS: I think that was Monday --that would be -- I would have to have a calendar.

THE COURT: Show him a calendar.

(Calendar shown to witness.)

THE WITNESS: I think it was the 29th of December, 1959, as near as I can find out.

THE COURT: December 29th?

THE WITNESS: Yes, sir; as near as I can figure it.

THE COURT: Is that Wednesday or Thursday?

THE WITNESS: That would be a Tuesday.

712 THE COURT: Tuesday?

THE WITNESS: No; wait a minute.

Monday was the 28th. I think it was the 29th. That might have been the 30th. It couldn't have been on the 28th. It was not the 28th. I am sure of that.

BY MR. LEEMAN:

Q. And that was as the result of a call to him about this case?

A. Yes. I didn't tell him about the case. I told him I had an estate matter I would like to talk to him about.

Q. Now tell us what occurred at this meeting between you and Mr. Sullivan. A. Well, I told him that this was Mrs. Jeffords, that was the widow of Tracy Jeffords, and I didn't have a copy of the will but I had this -- that there were two of us, Mr. Keith and I, named as executors, and it looked like a valid instrument, and I wanted to know -- I asked him, I says, "Can you help me out with this, Charlie?" He says, "Yes, I can, Jim, fifty-fifty with you."

I said, "Well, here is Mr. Keith, who is up in Connecticut. I don't know whether he wants to stay in or not, but he is under a doctor's care, and he had been down."

He said, "Well, that will be all right. We will work out all right."

713 I told him at the time, I says, "You know" -- I know Charlie Sullivan's practice. He had had very few estates, and he didn't have experience in estates, and he asked me to buy him a set of books so he could make out his tax returns properly. Which we did. We bought him a \$70 set of Prentice-Hall tax books so that he could make out the tax returns.

Q. Now getting back to this meeting, was there any papers in connection with this estate given to Mr. Sullivan at that time? A. Except what I had on this table that I had brought over from the apartment, and as far as I was aware they had only to do with the genealogy of Mrs. Jeffords, and there were some bank books, building and loan books.

I had had those before, before Mrs. Jeffords died. I was depositing her checks. She used to get checks in there in the mail frequently.

Mrs. McCord, when she was there, and she was there about two-thirds of the time, would open her mail and I don't know whether -- I think maybe she wrote some letters for her, and turned those checks over to me for deposit.

714 I deposited those checks and I had the books in which the entries were made. I still have them.

Now, they were there. I had bank books which I had been using for Mrs. Jeffords, and I remember I turned those over to Mr. Sullivan and I told him I wanted them back. He said I should have them back and he gave them back to me.

Q. Well, any of these stock certificates or those bonds that have been the subject of this case, did you see any of those? A. There were none of them exhibited. There were none of them on display that I could at this time or at any time to my recollection identify or acknowledge as such.

Q. Did there come a time when you and Mr. Sullivan went through the house? A. Yes.

Q. Tell us what occurred then. A. Well, I -- you might say the day, the Monday we took Mrs. Jeffords' body to Ohio, Mr. Keith and I went over to the house; I showed him the house and that is all. I told him what was there and the people, the roomers, were still in the house, and there were a lot of keys outstanding, and there were people wanting things out of there.

715 So when Mr. Sullivan came into the case we immediately went over to the house and I did lock up Mrs. Jeffords' bedroom. That is where she had a lot of things.

And Mrs. McCord and Elly Gill were one time there struggling to open the door. It was a little old key that anybody could use, except it was stuck, there was paint on it, and they could not open the door.

They were looking for Ellie Gill's suitcase that was supposed to be in there and they acted kind of mad because Ellie Gill's suitcase had been locked up.

Well, it wasn't in there.

So I reported this all to Mr. Sullivan and he said, "We had better search this place thoroughly, and right away".

So Mr. Keith came down and we did.

So we searched from the garret in the attic where the rafters were open and exposed, including the cellar; we took up rugs, looked behind pictures, looked under the bottoms of the furniture and all those places. Mr. Sullivan was very much interested in finding out what was there and what was not there, and he was quite energetic and I was pleased with the way he went about it.

Q. Who was there when this search was made? A. Mr. Keith was there. I wanted Mr. Keith to be there and he did come down for that particular purpose.

716 Q. And when you searched the house did you find any other valuable papers? A. Well, I think we found some evidence of some bonds down at the bank.

MR. LASKEY: If the Court please, the question was, "Did you find valuable papers".

THE COURT: Yes.

THE WITNESS: These were valuables. These were acknowledgments, receipts.

THE COURT: Will you define what you mean by valuable papers, Mr. Leeman?

BY MR. LEEMAN:

Q. Did you find any securities of any kind?

THE COURT: Certificates, do you mean?

MR. LEEMAN: Certificates of stock, or bonds, or evidence of value.

THE WITNESS: Nothing that I would identify. I don't know what was there except for one thing and that was at a later date when Mr. Keith was not there. In Mrs. Jeffords' suitcase which was on top of a little cedar chest -- there was another cedar chest there that was full of stuff -- was this Des Moines Railway certificate, had a safety pin

in the envelope, and it was set up for taking or counting off as a loss for income tax purposes, as near as I could figure out. At that time I didn't know who it was that was making out Mrs. Jeffords' tax certificate.

717 Now I know definitely that that was there, and there was evidence of some real estate note, and also five \$1,000 U.S. bonds, called Magic 5, I think they called them, which were negotiable on delivery.

Mrs. Jeffords had instructed the bank not to send those out to the house. She received the notice during her last illness that they had arrived for her and were at the bank.

So we found that out, found the receipt for that.

I think there was some stock down at the bank also which Mrs. Jeffords had had ordered at one time or which was there for some other reason; I don't know. But we had those receipts.

Now, as to the other papers I have two suitcases there which are illustrative of the type of papers Mrs. Jeffords had in that house in the little cedar chest, in those suitcases, in the bureau drawer, in the cupboard downstairs, and they were just exactly like that, and Mr. Sullivan and I and Jerome Keith gathered them all together and they were taken down to Mr. Sullivan's office; very little inspection done at the time.

I don't know of any inspection that was really done.

718 Now, that isn't all that Mr. Sullivan had down there in his office. That is the part that he returned to me and Mr. Keith, and one time that was all shown to Mr. Gray, and much more. Mr. Gray was there a half a day or thereabouts, looking at every little thing that he wanted to look at. He wasn't even interested in looking.

MR. LASKEY: Would you fix that date, please?

BY MR. LEEMAN:

Q. When was that? A. I can't fix the date, but Mr. Gray will know, and it was done by appointment with Mr. Sullivan.

MR. LASKEY: If the Court please, do I understand that this witness was present? He has given some detail as to what transpired.

THE COURT: Were you present?

THE WITNESS: I was present.

And Mr. Sullivan had all those papers out there. He didn't have a place, really, to keep papers but behind the door in the pile, and these suitcases that were there a long time in the adjoining office, and they were put up on his desk, and some of them on a chair for Mr. Gray to look at.

719 Mr. Gray looked at quite a number of them, and then he lost interest. It was --

THE COURT: We will take a five-minute recess now.

(Short recess.)

BY MR. LEEMAN:

Q. Now, Mr. Bird, what occurred at this first meeting with Mr. Sullivan after Mrs. Jeffords' death, at your apartment? What occurred at that meeting? A. Well, I turned over certain preliminary papers to him, and had an understanding with him that he would help me with the case and that the fee on it would be set by the court, which I understood to be ten, or up to or possibly ten per cent, and he walked out with the papers and that was fine.

Q. Did he make any notes at that time? A. Yes, he did. He made some notes on the table there.

MR. LEEMAN: Let me see this list of stocks.

MR. LASKEY: That is Exhibit 6-B.

THE WITNESS: I gave him some notes and he made some notes.

BY MR. LEEMAN:

720 Q. I show you Plaintiff's Exhibit 6-B and ask you if you recognize that. A. Yes. That was here yesterday, I think it was.

Q. And can you tell us whether or not that was written on that visit to your apartment? A. No, I can't tell you but I am almost positive it was not written there at that date.

This is a photocopy of some sketch or paper.

Q. Do you have any reason for that conclusion? A. Yes.

Because this wasn't an accounting; this wasn't a financial accounting, -- I mean summation of anything. It was done there that day.

These items couldn't possibly have been known to Mr. Sullivan at that date.

Now, there was the H Bonds, five of them on there. This may be a copy of the notes he made there that day, or they may be on here, or may be a copy of some notes that he made there that day respecting certain items, but I doubt it.

Q. These five U. S. bonds that you speak about, where did you first find out about them? A. Well, I knew that the bank had them because a letter had come to Mrs. Jeffords. She said "Don't let them come to the house."

721 They were down at the bank, and I completely forgot about them. I have a memorandum written on the back of an envelope noting that they were down there. I completely forgot about them until we got ready to make up what you call an inventory. I think that inventory of Mrs. Jeffords' assets comes to about \$56,000. It is in the record.

THE COURT: Are you referring to five \$1,000 bonds?

This has no relation to the two \$5,000 bonds?

MR. LEEMAN: No, Your Honor; this has no relation to those.

THE COURT: All right.

THE WITNESS: There are some other items on there that couldn't possibly have been known to Mr. Sullivan at that time.

BY MR. LEEMAN:

Q. Now will you read them and tell us why? A. There is the Baycot note, and these building and loan association accounts.

There was a savings bond. I don't see it on here.

Those bank accounts, some of those were in my possession, some of those could have been on here, could have been on that table that day. But the Baycot note was not there and it wasn't known about, we didn't know about it until some time after, and the H Bond, the five \$1,000 bonds were in the bank and they hadn't been mentioned, there was no

722 evidence of them.

There was also some stock at the bank which we had to ferret out; we didn't have that information until they gave it to us.

We found assets that we didn't know were in existence.

Q. So if Mr. Sullivan testified that this was made up at that time, your testimony is that he was mistaken; is that right? A. I think he is mistaken.

He did make some notes there, but there was no -- that is a regular listing.

There was no listing of anything out there at that time.

Q. Did you discuss the people to be notified or listed in the petition for probate at that time? A. Yes. Some, or a little discussion. I didn't know who they were. I knew there was a cousin out here in Silver Spring that was the closest relation. I think she is the only first cousin.

Then there were some people out in California that were second cousins. One of them wrote me a letter and says, "I am a direct second cousin."

723 Q. Now, Mr. Bird, did there come a time when the question came up about some jewelry in this estate? A. Yes.

Q. And what occurred with respect to that? A. Well, I went with Mr. Sullivan to demand this, or to ask for this bag of jewelry, which I had asked Mr. McCord to take care of, and --

Q. When did you first see that --

MR. LASKEY: I don't think the answer was completed, if the Court please.

MR. LEEMAN: All right. We will let him complete it, then. Go ahead, if you can.

THE WITNESS: I saw this bag of jewelry -- I don't remember that date. I think it was about the 22nd day of October, about three days before Mrs. Jeffords died.

THE COURT: October?

MR. LASKEY: You mean December, don't you?

BY MR. LEEMAN:

Q. You mean December, don't you? A. October of 1959.

Q. Are you talking about October or December? A. Oh; December; December. December of '59. About three days before she died.

724 Mrs. McCord -- I had had a phone call from the nurse by the name of Wilhite, who said "You had better come over here if you want to see Mrs. Jeffords before she dies; she is on her way out."

So I got up. I went over. I don't know whether I went with my wife. I think I went over first, about 3:00 o'clock in the morning, and Mrs. Jeffords was there -- well, I would say she didn't know -- she was gasping for breath, panting, very heavy panting for breath. And my wife and I sat there beside her bed, and the nurse, and there was no change, she just continued. And then about daylight, why, the nurse wanted to go, it was getting ready for Christmas and she wanted her check. I paid her up to the minute and she left.

After a while, the doctor came, Mrs. McCord came, and they got a hatrack from downstairs and hooked it up at the foot of the bed and put a bottle on that and give, I think it was intravenous feeding, they called it. But Mrs. Jeffords' body was just lying there limply but she was gasping for breath.

Then after the nurse had gone, the one that was paid off, Mrs. McCord came down and said, "I think we should take that bag of treasure off of her underwear, don't you? I think we had better take care of that", and I said, "Oh, certainly, take it off."

725 So she went upstairs and came back down and showed me this bag of what they called treasure; I don't know what it was.

I saw in there at the time, at first it was a solitaire diamond ring of a good-size stone; the three-stoned diamond ring which I had seen Mrs. Jeffords wear many times to minor social functions; there was her garnet ring, her birthstone, for January, which is a brown stone ring with a little circle of diamond clips or something around it; and a wedding ring, and I don't know whether there were four or five;

I think there were four rings in there; and a \$20 bill with a safety pin in it. And Mrs. McCord showed those to me, took them out of the bag--

Q. Where were you when they were shown to you? A. I was down at the foot of the stairs on a, some kind of a chair or divan-type, chair down at the foot of the steps on the first floor.

So she ran up the steps -- Mrs. McCord used to run. She didn't walk; she would run -- and that is the last I saw of the bag until Mrs. Jeffords' death along the bedside; Mrs. McCord was with the nurses and she said "I have the rings" and she took them out of her pocketbook; it was a block purse; she took the bag out of there and then put them
726 out in her hand, and there were several other nurses around there -- I think Miss Michalka was there, too -- and then put them in a long type of pocketbook, with this \$20 bill, and also there was some what you call petty cash in a drawer, and we got that and we put that in the long purse along with the \$20 bill. I told her to take care of it.

And this Mrs. Souder said, "You better get Harlow to come and get you, with all that value on you; you should get some protection; and he can take you home."

I don't know why she talked that way, unless she was afraid of going on the streets at night.

That is the last I saw of that until Mr. Sullivan and I went over to Mrs. McCord's house to get it.

Q. Was that the bag that was exhibited here? A. Yes. I have it here.

Q. You have it here with you? A. Yes. It is this bag; yes, it is. I don't think it is tagged, but this is it (indicating).

Q. Now, Mr. Bird, how many rings are there now? A. Four rings.

Q. How many rings were there when you saw them? A. I thought five, but I might be mistaken. There was, I am sure, the big ring and there was a three-stoned diamond ring; and the garnet ring.

727 Now, the garnet ring -- this is an imitation ruby --

THE COURT: I can't hear you. The garnet ring what?

THE WITNESS: The garnet ring was larger than this, in the stone setting it was flat, and it had a circle of diamonds around it, but this is not it distinctly. This is an imitation ruby.

It is something on the same style as the garnet ring.

And the three-stoned diamond ring was about the same size as this glass ring except that it was old and set in old gold and it had a twist on it, a slant; it was not set parrallel with the circle but at an angle with the circle. And I was familiar with those rings; I had seen them so many times.

THE COURT: I wish you would have this determined by this testimony:

What was missing, if anything, from that bag. So we will have no doubt about that.

THE WITNESS: There was definitely missing, Your Honor, the garnet ring and the 3-stoned diamond ring.

728 THE COURT: And what is there that was not in there before?

THE WITNESS: I am not -- I am sure that this two-stone affair was not there.

THE COURT: What is the two-stone affair?

THE WITNESS: Well, here it is; I don't know.

BY MR. LEEMAN:

Q. Is it a diamond ring? A. I understand it is, with two diamonds in it.

THE COURT: That was not there?

THE WITNESS: Yes, Your Honor. And this ruby, imitation ruby diamond thing, was not there.

THE COURT: And what about that 3-stone imitation diamond ring; is that there?

THE WITNESS: No; it is not here. Mrs. McCord took that off the table, put it in her pocketbook, and whether that is the same ring that is down here or not, I don't know, but I would -- my best recollection is that it is a different ring. The one I saw was a larger and

flashier looking piece of -- that is the one that was actually on Mrs. Jeffords' finger and thrown on the table.

Maybe this could be polished up, I don't know; but it doesn't look the same to me.

729

BY MR. LEEMAN:

Q. Now, did there come a time when Mrs. McCord came to Mr. Sullivan's office when you and Mr. Jerome Keith were present? A. Yes.

Q. And when was that? A. Well, I don't have the date. I really don't know, but I think it was in January of '60.

Q. Was it shortly after the occasion when Mr. Sullivan came to your apartment? A. Well, it was not too long a time. It was a short time after Mr. Sullivan and I had been out to Mrs. McCord's house and picked up this bag with these rings.

Q. Let's get that in.

After Mr. Sullivan was at your apartment then did there come a time when you and Mr. Sullivan went out to Mrs. McCord's house? A. Oh, yes; we went out there.

Q. And how long was that after the time that Mr. -- A. I don't know the date, but as near as I can judge it was some time in January, maybe towards the latter part of January. No; I think it was closer than that, because I remember speaking to Mr. Sullivan that I wanted to get

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those rings before something happened to them.

Q. What occurred at that time at Mrs. McCord's house? A. Mrs. McCord went some place and got her pocketbook, that is a purse, the kind with a handle on it, and she said, "Here they are; there are five of them instead of four."

So she says, "They have been in my pocketbook all the time, in this purse."

So she exhibited them and I noted that. I didn't mention the fact to her, I didn't want to create any -- there had been no rupture or anything between us, even then. I didn't comment on the fact that the

three-stoned diamond ring and the garnet ring were missing, but I said to her, "Wasn't there a \$20 bill in that bag". Well, she says, "Oh, yes", so she went some other place, out of the room, and came back with a \$20 bill, and this long purse, black book, I guess 7 inches long anyhow, with a clasp at the top, and there was some other money in there, too. That is the change that had come out of the dresser drawer, that probably, as near as I can figure, was the rest of the petty cash that had been over at the house. So she gave that to us.

And we went over after that, told Mr. Sullivan about the rings being missing, went over to see -- to see the woman who had made the bag.

731 Q. What else occurred at Mrs. McCord's house on this occasion?

A. Well, I took the lion and left, with Mr. Sullivan in his car.

Q. Did you take the rings with you at that time? A. Yes.

Q. How many rings was in the bag that you took with you? A.

I remember saying "There are five instead of four."

I will have to look at these -- I don't know whether there are five or four at this moment, but that is what she said; I can remember that.

No; there are four rings in this bag; I am sure that is all.

Q. Who took the rings? A. Mr. Sullivan. He gave her a receipt. The top of it was the same. He tore the paper in half. He had that like one of those old-time deeds.

Q. What was it torn in half for? A. Well, so the receipt would -- part of the receipt would match the other half.

Q. And who got the receipt? A. He gave her half and he held half.

732 I didn't know why he did it, why he was being so extra-careful, but he did it that way.

He never said anything.

MR. LEEMAN: Do you have such a receipt?

MR. LASKEY: It is in evidence.

THE CLERK: Here it is, Mr. Leeman.

(Handing to counsel.)

BY MR. LEEMAN:

Q. Mr. Bird, I will show you that receipt. A. That is the one. I am sure that is half -- that is the duplicate of what he gave Mrs. McCord -- 1, 2, 3, 4, 5 -- no; 1, 2, 3, 4; that is right, four.

Q. That receipt shows four rings and \$30.36 in cash; is that right? A. Yes, that is right.

Q. Now, with respect to your recollection as to five rings what have you to say? A. Well, I don't know. That rings a bell with me, and she says, "And there are five instead of four."

I don't know whether she meant that ring she had or not, because she never gave that to us back, but if she gave it to Mrs. Jeffords, she took it back.

Q. Now, after that visit to Mrs. McCord's home when did you next see Mrs. McCord? A. Down at Mr. Sullivan's office.

Q. And who was present then? A. Mr. Keith, Mr. Sullivan and Mrs. McCord.

Q. And do you recall when that was? A. I think that was probably two weeks after the rings had been -- no; I don't know the date. I don't know the date.

I think it was probably about two weeks after we had obtained these rings.

Q. And how did Mrs. McCord happen to come to Mr. Sullivan's office? A. That I don't know. I was told Mr. Sullivan had called her in while Jerome Keith was down in town because he wanted to clear up some of this missing property.

Q. Now, what happened at that meeting? A. Well, we asked Mr. Sullivan who was in charge, he was the Master of Ceremonies, so to speak -- it was his office. He asked about the three-stoned diamond ring; then he asked about the garnet ring; he asked about the sunburst diamond pin that was in the will; Mrs. Jeffords' will; to Mrs. Croxton; he asked about a ring which had been left under the will to a Mrs. Olds or Mrs. Yoger, and said "We have to account for those", and "What

else do you know about anything Mrs. Jeffords had?"

So she said she didn't know of anything, didn't have any knowledge at all about the sunburst diamond pin or the ring which was left under the will to Mrs. Yoger, nor the three-stoned diamond ring, nor the garnet ring.

Now, the garnet ring, I suppose, was not a very valuable thing, but it was one that would impress your memory.

So at that time she was asked -- and Mr. Sullivan was very polite with her; there was no hard or loud or accusatory language -- he just told her what we wanted to know, we would like to learn.

So I know she was told we had talked with Mrs. Mae Fleming, the woman who had made the bag, and that she had described the three-stoned diamond ring, and we hadn't any word whatever about the ring was willed by the will to Mrs. Yoger.

She denied having knowledge of any of those items.

Now, those were small items.

At that time we had no knowledge whatsoever about the bonds. In fact, for months afterward. It was months afterward before we found out about the bonds.

She didn't tell us anything at all, there was no mention made about having some stuff in the cedar chest that had been turned over to me.

735 I didn't know that until I got the suit served on me.

Q. Well, who did the questioning of Mrs. McCord? A. Mr. Sullivan asked her, and he was using this very diplomatic language and terminology. I confirmed that we had been out to see Mrs. Fleming, the woman who had made the bag. And it seemed very strange as to how these two items could turn up missing.

Q. And what did Mrs. McCord say or do? A. Well, she said she didn't have them. She says "You can search my house", in that kind of language. She took the -- well, as though she was being offended.

And she walked out of there with I think her jaw was clamped and she walked on out.

Q. Well, was she crying? A. No, she wasn't crying but she was shaken; apparently so. I would say so.

Q. Well, is that about all she said? A. Yes. She didn't make many statements or anything except that she didn't know anything about these items.

Q. Now, Mrs. Bird -- Mr. Bird, when did you first learn that this suit had been filed against you? A. When it was brought to my door by a United States --

736 Q. Did you ever -- A. Probably the day after it was filed or maybe the same day; I don't know.

Q. And would that be about in June? A. Yes; June of 1960.

Q. Now when did you learn of these two United States bonds and the \$100-and-some-odd? A. That was at the day that Mrs. McCord's deposition was taken.

Q. And that would be when? A. I might say this --

MR. LASKEY: If the Court please, I think the question has been answered and I object to volunteering.

THE COURT: No; don't volunteer.

THE WITNESS: Well, I --

MR. LEEMAN: He was starting to talk and Mr. Laskey objected.

THE COURT: He was making a statement which was not in response to any question as I understand it, and Mr. Laskey objected to it on that ground. I sustained the objection.

MR. LEEMAN: And you sustained the objection?

THE COURT: Yes; unless it is something that he wants to explain.

If he wishes to add that, I will let him explain it.

737 THE WITNESS: That is correct. I do want to explain it.

THE COURT: Very well.

THE WITNESS: There was an investigator came into this case by the name of Payne, Edgar Payne, and he was instrumental in having the Treasury Department run a check on bonds, Mrs. Jeffords' bonds, to see if they were all there.

MR. LASKEY: Excuse me, Mr. Bird.

I can't see that this is in any way responsive or in explanation.

THE COURT: I don't think it is responsive to the last question, or explanatory.

MR. LASKEY: I move that it be stricken.

THE COURT: You may inquire if you like, into these matters and if there is no objection, it will be answered and, if there is objection, I will rule on it.

Now let's proceed.

Answer responsively.

BY MR. LEEMAN:

Q. I ask you, I believe the question was, when did you learn of these two United States Government bonds and the cash of \$1100-some-
738 odd? A. The first time I had anything definite on it was when we took Mrs. McCord's deposition.

Q. And when would that be? A. That is the date -- I don't know that date. It is on the record there.

Q. On the deposition the date is July 7, 1960. Would that be the date? A. Yes; that was the first time she revealed it.

We had information that these items were missing before that time.

Q. Who did you get that information from? A. From Mrs. Jeffords' inventory. She had an inventory every year from bank statement which we paid the bank \$30 to provide us with a list of all Mrs. Jeffords' purchases, and so forth. And also -- well, that is all the information we had, and that was not certain but that was what you call indicative, that these things were missing.

Q. Did you ever have any conversation with Mrs. McCord with respect to those? A. Never.

Q. Was you ever informed of the existence of those? A. Never. Not before this time.

739 Q. Before this time did you have any information that Mrs. McCord had the sunburst diamond pin? A. No. I had, yes, from Mrs. Croxton -- no; I didn't have any. No; that is incorrect; that Mrs. McCord had it. I did not have. I had information from Mrs. Croxton

personally that Mrs. Jeffords had that just a short time before she took to her sick bed, was wearing the sunburst diamond pin, and that she wanted it. She was after me and after Mr. Sullivan to produce that sunburst diamond pin, which we didn't have. Also, Mrs. Yoder wanted that other ring which we didn't have, and we had a demand from them in writing. That is Mr. Sullivan and I received a written demand from those people to produce those.

Q. But at no time prior to the filing of these suits was you ever informed by Mrs. McCord that she had this sunburst diamond pin? A. No.

Q. And what other jewelry? Was there some other jewelry in that? A. No; there was some jewelry in the safe deposit box; a bracelet, some other things, I don't know what they are, some rings and what do you call those brooches?

Q. I was just trying to find if your memory was better than mine.
740 Is there any other jewelry impounded in the court?

THE CLERK: I have nothing but the pin and the case ring there.

THE COURT: There were two United States Government bonds, face, \$5,000 each, and one sunburst diamond pin, and \$1220 is impounded in court.

That is what I read in the pretrial statement.

Is that what you have, Mr. Leeman?

MR. LEEMAN: What he has here is this little -- I will bring this out with the witness, I guess.

This here is the sunburst pin and this is the 3-stone imitation diamond or imitation ring.

MR. LEEMAN: That was not impounded, may it please the Court.

THE COURT: I don't see any notation that that was impounded.

MR. LASKEY: It was not.

MR. LEEMAN: How did it get in here?

MR. LASKEY: I introduced it in evidence; that is how. You were here.

MR. LEEMAN: That is all I wanted to know; was the sunburst diamond pin, the two bonds, and what is the amount of cash.

741 THE COURT: \$1220.

The claim is \$1230-something, I think.

There is some dispute as to the amount.

Well, it is a quarter of 4:00. Is this a good stopping place?

MR. LEEMAN: This will be a good time. I want to catch up on some of these details, Your Honor.

THE COURT: Very well. We will adjourn until tomorrow morning at 10:00 o'clock.

* * * * *

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JAMES F. BIRD

resumed the stand, and, having been first duly sworn, was examined, and testified further as follows:

MR. LEEMAN: Now, Your Honor, I would like to put in evidence the original will in this case.

MR. LASKEY: No objection.

MR. LEEMAN: Do we have it up here?

THE COURT: I don't know.

MR. LASKEY: The probate file does not have the original will. The original wills are always kept in a separate compartment.

THE COURT: The photostat is in there?

MR. LASKEY: Yes, sir.

THE COURT: Could you use that?

MR. LASKEY: I have no objection to his using it.

THE COURT: Do you want to put in the photostat?

MR. LEEMAN: Well, --

THE COURT: You can get the original if you want it.

MR. LEEMAN: I wanted to ask the witness if he recognized that as her handwriting. See, this will was in her handwriting and a photo-
770 stat --

THE COURT: Well, won't the photostat show that? But if you wish it, we will get it.

MR. LEE MAN: I think we probably should, Your Honor.

THE COURT: All right. We will take a five-minute recess and ask the Clerk to get it.

(Short recess).

THE CLERK: The will has been marked as Defendant's Exhibit Number 13 for identification, Your Honor.

THE COURT: All right.

MR. LEE MAN: I ask that this be admitted into evidence, if Your Honor please.

MR. LASKEY: I didn't hear you.

MR. LEE MAN: I ask that this will be admitted into evidence.

MR. LASKEY: No objection.

THE COURT: It will be received.

(The document referred to was marked Defendant's Exhibit 13 for identification and received in evidence.)

THE COURT: Do you wish to read the will into evidence? It has been admitted into evidence.

MR. LEE MAN: Yes, Your Honor.

771 This is in her handwriting and Mr. Bird is more familiar with it than I am.

May he read it to the jury?

THE COURT: No. I expect counsel to read it, unless there is difficulty in reading her handwriting.

MR. LEE MAN: I will do my best.

THE COURT: Is there difficulty?

MR. LEE MAN: In some places the names, but I probably can --

THE COURT: Very well; do the best you can.

MR. LEE MAN: We have a photostat copy of that here which Your Honor can follow if you wish to.

THE COURT: The jury must understand, but I will follow it along with the photostat.

MR. LASKEY: I have the Administration file. Does Your Honor want it?

THE COURT: No.

Do you want it?

MR. LEEMAN: I was just trying to arrange it so Your Honor could follow me on the reading of it.

THE COURT: Just go ahead and read it.

Mr. Laskey will correct you if he thinks it should be corrected.

772 MR. LEEMAN: (Reading):

"Last Will and Testament of Laura L. Jeffords.

"In the name of God, Amen.

"I, Laura L. Jeffords, of 2707 Woodley Road, Northwest in the City of Washington, D.C., being of sound and disposing mind, memory and understanding, and capable of executing a valid deed or contract, considering the certainty of death and the uncertainty of the time thereof, and being desirous to settle my worldly affairs and thereby be the better prepared to leave this world when it shall please the Almighty to call me hence, do hereby make, publish and declare this, my last will and testament, hereby revoking and annulling all wills and testamentary dispositions heretofore made by me, in manner and form following, that is to say:" --

THE COURT: Now, all that is in a printed form, isn't it, that you are reading?

MR. LEEMAN: Yes, Your Honor.

THE COURT: So that the jury will know.

That is not in her handwriting?

MR. LEEMAN: Only the name and the city and the address.

773 THE COURT: All right.

Up to this point, except for that, it is on a printed form?

MR. LEEMAN: That is right.

THE COURT: You could hold it before the jury so they can see. Just hold it in front of them and they can see the form.

MR. LEEMAN: Yes, sir.

I have read down to here, and that is a printed form.

THE COURT: Now the balance is in her handwriting?

MR. LASKEY: No. The next paragraph --

MR. LEEMAN: The next paragraph is printed.

THE COURT: All right.

MR. LEEMAN: "First and principally commit my soul into the hands of Almighty God and my body to the earth, to be decently buried at the discretion of my executors hereinafter named, and my will is that all my just debts and funeral expenses shall be paid by my executors hereinafter named as soon after my decease as shall be convenient."

That is in printed form.

And the first, 1, 2, 3, 4, 5, 6 words of the next paragraph.

774 "Second, I give, devise and bequeath to Miss Sarah Eldridge Gill, of 2707 Woodley Road, Northwest, Washington, D.C., the use of my house for her lifetime, including all furnishings except what has hereinafter been bequeathed or who may hold a bill of sale.

"Third, to the following persons I give, devise and bequeath \$5,000 each:

"Mrs. Anna Kitzmiller Croxton, my sunburst diamond pin and the statue and base attached thereto that she gave me.

"Mrs. Clara Ellis Taylor, Mrs. Dorothy Parker Yoder, Mrs. Dorothy Keith Buxton, Mrs. Golden Springman.

"Fourth to the following persons I give, devise, and bequeath:

"Mrs. Carrie Bailey, Mrs. Lucille Carder Brewington" --

THE COURT: Is her name Brewington or Carder? I would like to know.

MR. LEEMAN: Well, "Carder" is the middle name.

THE COURT: Then it is Brewington.

MR. LEEMAN: B-r-e-w-i-n-g-t-o-n, is the last name, Your Honor.

"Mrs. Bertha Smith, Mrs. Nina Jewett, Mrs. Mae Critchfield. Mrs. Mary Heath.

THE COURT: Keith, did you say?

775

MR. LEEMAN: H-e-a-t-h.

"Mrs. B. E. Carmichael.

"Mrs. Patricia Yoder Olds; and the diamond ring her mother gave me, green stone circle with diamonds, \$2,000 each."

"To Senator J. W. Fulbright I give, devise and bequeath my bronze statue entitled 'Fragment Dupathenon Par Pleidias';

"After the death of Miss Sarah Eldridge Gill, all my property, both real and personal, is to be sold, including all that I am to inherit from the estate of my late husband, Tracy L. Jeffords, and the entire amount divided between James F. Bird and Jerome Keith" -- K-e-i-t-h.

"All the rest and residue of my estate, both real, personal and mixed, I give, devise and bequeath to my executors, James F. Bird and Jerome Keith, to them and their heirs and assigns forever, share and share alike, as tenants in common."

This clause is a printed form with the two names inserted.

776 "And lastly, I do hereby nominate, constitute and appoint my executors of this, my last will and testament, and I desire that my executors hereinbefore named shall not be required to give bond for the faithful performance of the duties of that office."

That paragraph is in printed form.

"In testimony whereof I have set my hand and seal to this, my last will and testament, at Washington, D.C., this 2nd day of July, 1951, in the Year of Our Lord 1,951.

"Signed: Laura L. Jeffords."

This is what they call the attestation clause, which is in printed form.

"Signed, sealed, published and declared by Laura L. Jeffords, the above-named testat" -- the rest of that word was not completed --

"as and for her last will and testament in her presence and at her request and in her presence, and the presence of each other we have hereunto subscribed our names as attesting witnesses."

That looks like "Kenneth" -- Mr. Bird, what is that, Kenneth what?

THE WITNESS: Birdsfield, B-i-r-d-s-f-e-l-d.

MR. LEEMAN: Kenneth Birdsfield, 1613 Harvard Street, Northwest, Washington, D.C.

Elizabeth T. Allen, 6306 Hillcrest Place, Chevy Chase, Maryland.

777 "Elizabeth Hall, 210 East Thornapple Street, Chevy Chase, Maryland."

Now, Mr. Bird, will you take the stand?

FURTHER DIRECT EXAMINATION

BY MR. LEEMAN:

Q. Mr. Bird, I will ask you to look at what has been admitted into evidence as the last will and testament of Laura L. Jeffords, and ask you if the parts of that that are in script, whether you can recognize that handwriting. A. Yes.

Q. And whose handwriting is it? A. That is Mrs. Jeffords', Laura L. Jeffords' handwriting.

Q. Except for the witnesses? A. Except the witnesses. That is right; except the witnesses.

Q. I don't recall whether I asked you this question before or not:

I will ask you whether or not Mrs. Jeffords ever in her lifetime told you that she had given her cedar chest to Mrs. Estelle McCord.
A. No.

Q. Did she ever tell you in her lifetime that she had given her the contents of the cedar chest? A. No.

778 Q. Now, Mr. Bird, do you know whether or not Mr. Gray here at the counsel table, was ever associated as an attorney with your former attorney, Mr. Charles B. Sullivan? A. Yes, I do.

Q. And? A. He was.

Q. Do you know whether or not they had offices in the same suite?
A. At one time, in 1948 or '49, yes; they were associated together in offices and in practice.

Q. Now, did there come a time when you had a disagreement with your former attorney, Mr. Charles B. Sullivan, Jr.? A. Yes.

Q. And what brought that about? A. Well, several things. Mr. Sullivan was seeing quite a bit of Mr. Gray. I asked Mr. Sullivan what was Mr. Gray doing in his office so much.

He says, "Well, we have only one case left over that we are working on together now."

And I saw Miss McCord in the office and Mr. McCord in the office and I asked Sullivan what he was doing in there, and he said he didn't know; he was probably seeing Mr. Clark, Slater Clark.

779 THE COURT: What is Mr. Clark's status in this?

MR. LEEMAN: Mr. Clark was employed to assist Mr. Sullivan.

THE COURT: Did he have offices with Mr. Sullivan?

MR. LEEMAN: He had offices in the same suite with Mr. Sullivan.

THE COURT: All right.

THE WITNESS: He said, "I see you been snooping around", and I said, "No. I have to recognize what is before my eyes, however." And of course I have been in the offices where Sullivan and Gray used to practice over in the Bowen Building many years ago, '48, '49, and quite some time thereafter, and he said "I have only got one active case with him now", and I said, "Well it looks like a conflict of interest here." And soon after that he asked me for \$13,000 and permission to handle all of the business without respect to anything Mr. Keith and I might have to say, without consultation with us. He wrote me a letter to that effect.

He wanted to handle everything.

Mr. Keith was to send him a copy of it. I don't know whether he had it or not.

I called him, reached him out in Chicago, and he came on here from Chicago and we talked with Mr. Sullivan, and asked him to stay
780 in the case, that he had all familiarity with it and he knew all the details, and talked about Mr. Gray in the case, and Mr. Keith says,

"Charlie, can't you give Gray a kick in the pants and handle this thing yourself independently?"

That was in Mr. Sullivan's office.

So the result of that was Mr. Sullivan said he would stay in the case.

But there were some things: He didn't have any privacy in his office; he had some of the files over in Virginia, and he would purposely mis-file papers so that they could not be found in his own office, it was a small suite; and there were other lawyers coming in there and at times occupying -- there was another man in there, or I know there was one other man in there regularly and a fourth man part of the time.

So I asked him to get that narcotics evidence in the safe deposit box, and also the nurse's chart. I said, "I would like to get that where we are sure about it."

So he agreed and we first put the chart in the safe deposit box and part of it was gone. Then there was this prescription blank by Richwine. He got that some time later. I don't know which -- I mean, I don't know which; it was one or the other, we had to do it in two in-
781 stallments. He said it took him several days to locate it.

So we put that down in the safe deposit box.

And then he wanted to settle the case. He said he would like to have this thing settled, and I demurred; I didn't want to pay them anything. According to what he had said, we had a clearcut case. And he stopped work, and he wrote, after writing this letter demanding \$13,000. That was in addition to the \$7,000 that I had paid him up to May -- I don't know, May 16, 19 -- well, the day the first account was filed.

And the agreement was that he was to get his money at the end of his service, at the end of the case, as to what would be allowed by the court at that time.

So from then on he wrote several more letters. And I explained to him that at that time the second account was due in the probate court and he had overpaid the taxes \$2,000, and he set it up so they had

the amount returned by him showed that they had over \$6,000 due -- that is the federal. So they filed a lien for some \$6,000 against the estate, so everything was frozen.

Now, I found out that that was an overpayment, and Mr. Keith and I had bought him a set of tax books so he could estimate the taxes correct. So he did nothing.

782 Part of these legacies were paid and part of them were not paid; nothing had been done on them. There were two or three of them that had been paid. So that their work was at a standstill.

So then it was at a time when we were coming out of the safe deposit box entrance at that bank, the American Security and Trust Company, that I said "Charles, I would like to have a real, down-to-earth talk with you."

He said, "I would like to have a talk with you, too. I am going to sue you."

So that is when I consulted Mr. Leeman.

So Mr. Leeman went and tried to patch things up again but apparently there was no patch.

Q. Now since that time, Mr. Bird, has Mr. Sullivan taken action to endeavor to collect more money from the executors? A. Yes. He filed a motion or petition in the Probate Court for an allowance of \$13,000 on a time basis, and that was heard and there was a judgment entered for him for \$10,000. That is in addition to the \$7,000 he had already received. Because he wanted out. You see, these cases are ordinarily settled when the case is terminated, but he wanted out and he wanted to collect his money at the earlier date; and he didn't want to

783 wait until the case had been closed. So I refused to go into it with him, and talked to Mr. Keith, and we had to pay somebody to un-snarl in the federal income tax the \$6,000 lien that they had filed. We didn't really owe any money; we had really two thousand and some dollars due us coming back, but we had to pay somebody to get that lien off.

So we found out there were several errors in his account, substantial. He confused common stock with preferred stock.

I have a whole file on that. We had to do quite a bit of straightening around with Mr. Sullivan.

The result of that trial was we had to take it to the Court of Appeals and have it reversed, had his claim thrown out. Without that the Probate Court was without jurisdiction to enter a judgment.

Not only that, but he had attached the funds of the estate on that illegal judgment, and attached the bank account and the accounts of Hemphill and Noyes which were subject to injunction.

He was in the case when that injunction was issued. He attached those funds in the hands of Hemphill and Noyes.

784 So we had to file several motions and have them heard to get rid of that attachment, and that \$10,000 judgment that he had; and we got rid of those finally.

But I understand he is still filing motions. He files, oh, five or six. I understand he has 2,000 that are pending somewhere.

He has asked -- he asked this District Court to reverse the Court of Appeals, and when they didn't do it, then he filed an appeal to get his appeal in the United States Court of Appeals on the refusal of the Court to -- of the lower court to reverse the Court of Appeals, as far as I can understand it.

So it was a very sensitive subject that I was putting that evidence about the narcotics in the safe deposit box.

The charts showed at the time this woman was being injected, all of her illness or during part of it, that she was completely out, without pain, and there was another incident with respect to one -- not a nurse, but an employee of their house, named Timmons, that the McCords had brought to the place.

So he was sensitive about that, and I thought it was important to show that this demerol had been prescribed for severe pain. We had the contention in there that the woman was incapable of attending to business.

785 I urged on him, I said, "Mr. Sullivan, this woman was in severe pain, she wasn't competent to transact business. If she was full of

demerol, she was not competent to transact business, so it is either one way or the other. That is important evidence."

And I insisted on getting it in the safe deposit box, or part of it, the part he furnished me anyhow.

So that is the time he said "I am going to sue you."

That was the occasion for it.

Q. Now, Mr. Bird, as counsel to assist Mr. Sullivan, was a Mr. Clark brought into the case? A. Yes.

Q. What was his full name? A. -- I think it is "A" for Alexander, Slater, S-l-a-t-e-r, Clark.

Q. And where was his office? A. His office was right in there with Mr. Sullivan's, adjoining. They shared space, they filed papers.

Q. They occupied the same suite? A. Yes.

Q. Now, how did he happen to be brought into the case? A. Well, Mr. Sullivan was called by Mr. Gray as a witness, and Charlie said, "Well, if I am going to have to testify, I am going to have to have another
786 attorney. A lawyer can't argue a case in which he is attorney handling the trial."

So we were asked, or asked in a prayer or petition to employ counsel, or a counsel, and that order was signed. It didn't mention any attorney. So Mr. Clark, who was his office associate, came into the case. And that was for the purpose of attending the cross examination of Mr. Sullivan. And his deposition was taken, as I understand, and it is in the file. I read it once, quite a long time ago. I did not attend. It was taken down in Mr. Gray's office.

Mr. Clark was acquainted with the McCords. He knew Mrs. McCord and he knew Mr. McCord out at the Congressional Country Club, and one time when they were down at Mr. Gray's office, they had very affable greetings, and exchanges of conversation with Mr. Clark. So I didn't know what to think.

Q. Did there come a time, Mr. Bird, when you found out that Mr. Clark was also a member of the Congressional Country Club? A.

Oh, yes; he was a member of the Congressional Country Club, with Mr. McCord, and after they bought this house down there close to Mrs. Jeffords, I found out it was sold and they had moved. Mrs. McCord and her husband were living out at the Congressional Country Club. So they had left the District of Columbia.

787 I asked Mr. Sullivan about that, and he resented my finding out. He says, "How did you know that?"

He said I was snooping around.

Q. Now, Mr. Bird, will you tell the Court and jury how you became the owner of the home of Mrs. Jeffords at 2707 Woodley Road?

A. Yes.

Q. Explain. The will provided for a life tenant. Will you explain that? A. Yes, sir. Eldridge Gill was the maid up there, or companion or however you might say; she was an elderly spinster, as far as I knew, 83 years of age, and she had had an accident. She could get around with a cane, and by sitting on a chair and sliding that mostly. She had some kind of a -- I think they call it Meniere's [min yers] disease.

I looked it up once, a kind of an ear complaint, and it caused her to fall over.

She was a patient out at the house when Mrs. Jeffords was a patient. She was in bed there. They were both being treated by Doctor Richwine, and of course as this will says, "The use of my house for her lifetime, including all the furnishings except what have been hereinafter bequeathed
788 or who may hold a bill of sale;" -- that went to her, the house for her use for her life.

Miss Gill, or Miss Ellie we called her, prepared to go down to I think Petersburg, Virginia, where she had her niece build a house and live down there. That is before Mrs. Jeffords' passed. So she did.

I think I have testified here before she took out two automobile loads of household goods, a great big truckload of them, and mostly clothing. There were two fur coats; one of them was valuable. And a lot of small dresses, and this Miss Ellie Gill was a tall, angular person, distinctly not tall like Mrs. Jeffords; Mrs. Jeffords was small.

Took all her dresses and everything of that sort with her, and came back. I didn't know what they took. Miss McCord had her car out back and I don't know what went out back there, but there was a constant hauling away of stuff out there.

I said to Miss Gill, "You will have to stop this. You are going to get me into trouble, if I have to account for this property. You will have to stop, because you can't strip it down to nothing."

And she had a set of brass owls out there at one time, and she had discarded one of those fur coats finally and a lot of dresses and
789 left them in the living room. But this was both before and after Mrs. Jeffords' death they were in there taking stuff out of the house.

So then there came a time --

Q. Speak a little louder, Mr. Bird, and don't hold your mouth so close to the microphone, please. A. Then there came a time she wanted to sell her interest. She had an attorney by the name of Abel, who insisted, I think, he wanted \$25,000 valuation on the house, and he would compute that down to what her life interest would be. And the house was valued for sale value, or market value by the Internal Revenue Bureau at \$18,000, and that was not counting the necessary repairs.

So we settled with her, and bought her life interest in the furnishings, what were left of them, and all the light stuff was gone, but Mrs. Jeffords had a lot of heavy antique materials there. They were still there. And I think we paid her a full -- I mean at the computed scale for that, and made no question about the things that she had removed.

Q. Explain what you mean by computed scale, would you? A. Well, like these insurance companies have these -- they consider your life expectancy when you are 83, that you expect to live so many years; I don't know; on the basis of \$22,000 or \$25,000, you would be entitled
790 -- that was reduced to so much in cash. That is, the cash surrender value of that would be that.

So she did that through her attorney, Mr. Gabel. Then Mr. Keith asked to sell me the furnishings in the house. We talked about what to do with it, whether we would fix it up and hold it or what we would do.

He sold his half interest in the house and his half interest in the furnishings to me.

And, excepting for sentimental value, why, things he took with him, he had them taken to his home for sentimental items.

And I disposed of the rest, or part of the rest, and some of that was still out there, we were using some of it. Sent it down to auction, gave some of it away; gave some of those pictures and things which I -- I bought them in.

And I think there are two or three of them out there now.

Q. The life tenant was represented by counsel? A. That is correct.

Q. And these transfers were made on the record? A. That is correct, and Mr. Burkart, the Deputy Register of Wills, insisted that her attorney sign those papers so that the record would show that she
791 was not being overreached.

Q. Now, Mr. Bird, do you remember an occasion in the summer of 1959 before Mrs. Jeffords died, when there was a reception given for the daughter of Mrs. McCord, and there was a silver tray involved in that? A. Yes. I heard about that. There was a silver tray from Mrs. Jeffords' house taken out there.

MR. LASKEY: The question was whether he remembered, and he now says he heard about it.

If the Court please, I don't believe that is responsive to the question and I move to strike it.

THE COURT: Yes. Answer responsively.

If you remember it, or did you remember it; did somebody tell you about it?

A. I knew there was a big silver tray gone from Mrs. Jeffords' house.

BY MR. LEEMAN:

Q. Did you ever hear any discussion either by Mrs. McCord or Mrs. Jeffords with respect to that tray? A. Yes. After it was over,

Mrs. Jeffords asked me and she asked my wife in my presence to try to find out how much those trays were worth, or the silver was worth. She had a lot of silverplate that needed replating -- to take a look downtown in some of these secondhand, or these stores, and find out if we could give her an idea what they were worth.

792 I didn't do it but I think my wife did, and she can testify to that.

I didn't attempt to shop around and get a price on those things.

Q. Did you hear any discussion about the purchase of that tray by Mrs. McCord? A. Yes. Mrs. Jeffords was selling those things. She said Estelle had wanted to leave it out at her house to give to her daughter, and she wasn't going to do it.

Mrs. Jeffords sold her things; I know that. That is one of the ways she kept up, kept her household going.

Q. Do you have any information as to whether or not this \$25 check that was written at that time had any connection with the sale of that silver tray?

MR. LASKEY: I think you should be more specific.

Are you referring to the check that you identified here before the Court?

MR. LEEMAN: That is right; the one received in evidence and has been identified.

MR. LASKEY: I think it should be referred to by exhibit number so the record will reflect it, Your Honor.

THE COURT: Yes.

793 MR. LEEMAN: I am referring to Plaintiff's Exhibit 1, a check for \$25, signed by Estelle Smith McCord.

THE WITNESS: I didn't see that check until it was produced here and I don't know the circumstances under which it was given. But that was what Mrs. Jeffords had established as the price for that tray.

She never told me.

THE COURT: What date is it?

THE CLERK: September 4, 1959.

MR. LEEMAN: That is all, Your Honor.

Your witness.

CROSS EXAMINATION

BY MR. LASKEY:

Q. Mr. Bird, do you know whether or not Mrs. Jeffords had some royal darby china? A. No. I don't know any names of any china.

Q. Do you have some china that was Mrs. Jeffords'? A. I have some china from Mr. Jeffords' estate that was Mrs. Jeffords' property.

Q. And that was taken by you and your wife some time before September 18, was it not? A. That was.

Q. And there was also some Chinese China that was taken by you and Mrs. Bird at the same time; is that correct? A. I think there
794 was.

Q. And at the same -- A. That was during Mrs. Jeffords' lifetime, with her suggestion.

Q. About December 18 or shortly before that? A. Well, no; something after that, I think. I don't know. My wife was over there working. We gave Mrs. Jeffords a couple of chairs, little chairs, rocking chairs. Mr. Keith took them, so they would fit her.

And Mrs. Jeffords asked my wife to take some things, but my wife didn't take, some china, because it was nothing to match, just odds and ends. And there were some plates down there -- there were I think six soup plates and six dishes which had been Mr. Jeffords', and she gave them to me following that time.

Q. Following December 18? A. Sometime there, yes. I gave one of them to Mrs. Souder.

Q. Now, sometime after December 18 you and Mrs. Bird also took some silver hollow ware; isn't that correct? A. I don't think so. I don't remember.

We took two or three articles there, yes; which were subject to replating. Yes.

795 Q. That was silver? A. I don't recollect that. It was silverplate.

Q. Silverplate? A. Yes.

Q. And that was after December 18th? A. Well, I think so.

Now, Mr. Laskey, I can't be definite about that but I am pretty sure

that it was shortly after the 18th.

Now, my wife came over there and we put -- the kitchen had no utensils in it, Mrs. Jeffords didn't eat there, so we brought kitchen utensils from our apartment and we bought some and we brought groceries in there, and we had to get her a cook, there wasn't nobody to cook; and we brought her those two chairs; we had those two little rocking chairs. One we had given her quite sometime before and we gave her this other one to have up in her bedroom, that fit her. That was just a small -- it cost \$72 down at Woodward and Lothrop's new.

Q. But the two sets of china and the silverware which you took had been Mrs. Jeffords? A. Yes.

Q. And she gave them to you? A. Well, she told -- I don't know what the arrangement was. She told my wife to take some of that
796 china, which my wife didn't take.

Q. But you did take it somewhere along in December? A. I don't know. I think so. Some have -- they were odds and ends and very trifling.

Q. Weren't they two complete sets of china? A. No.

Q. One Royal Darby and one Chinese china? A. No. I don't know the names of any of these things. You are asking me something that I don't know anything about.

Q. Well, you know what a set is, don't you, of china? A. Well, I know what the - a full set?

Q. Yes. A. Yes. I think I do.

Q. Well, weren't these two sets of china that you took? A. No; absolutely not. There were no full sets.

Q. In what respect -- A. Odds and ends over there. And Ellie took all those things.

Q. I am talking about what you took. A. I told you I didn't take any.

Q. I misunderstood you, Mr. Bird. I understood you to say that during the period around December 18, possibly after, that you and

Mrs. Bird took china? A. We took a few items --

797 Q. And silverware. A. Not silverware; a few items.

Q. Silverplate? A. I don't know what they were; I couldn't identify them. And there were only a few items that stayed there after Ellie was gone.

Q. I am talking about the period before Mrs. Jeffords' death, those items that you have referred to now were taken during that period, were they not, in the month of December? A. They were taken before Mrs. Jeffords' death, yes.

Q. And they were a gift from Mrs. Jeffords to you and Mrs. Bird; is that correct? A. I understand so. Mrs. Jeffords had asked her to take some things.

Q. And you didn't question her competency to make that gift, did you? A. No; I thought it was very inconsequential.

Q. I asked you, you didn't question her competency to make that gift, did you? A. At that time, no.

Q. Thank you, sir. A. She was talking and she said -- told my wife in my presence --

798 MR. LASKEY: If the Court please, I think the question has been answered.

THE COURT: I sustain the objection.

BY MR. LASKEY:

Q. The lion picture was a gift to you also, was it not? A. Well, I assumed that it was. I acquired it after an adjustment with Mr. Keith.

Q. You took it on December the 19th, 1959? A. I asked her to take it over to Mrs. McCord's house, yes.

Q. And you considered that it was a gift to you, did you not? A. I didn't know. I wouldn't set it up as a gift. I held it for acquisition. Anyhow, I hoped I would get it.

There were many people wanted to take pictures and paintings that she had, and did take them.

Q. And that picture was taken from Mrs. Jeffords' house by your express request, was it not? A. Yes. I asked Mr. Collier, if

he could, to take that along.

I think it is worth about \$5, on account of the frame.

799 Q. Did you have it appraised? A. No, I didn't. It can be appraised. It can be returned to the estate right now.

Q. It was never appraised along with the other assets of the estate, was it? A. I think not.

Q. Well, you know it wasn't? A. Well, I am not so sure. I don't know what is in that list. From my recollection. I don't memorize that appraisal list.

I have heard hearsay that the estate was worth \$175.00.

Q. \$175.00? A. \$175 -- somebody out of their thoughts.

Now, the record shows it is about \$54,000 appraisal.

Q. Isn't the gross -- are you talking about the appraisal or the gross estate? A. Well, I am talking about the appraised list of assets.

Q. Now, the estate, according to your own account, excluding the value of the real estate, was reported by you under oath at something in excess of \$116,000; is that not correct? A. I don't know. I think the first account is \$108,000.

800 Q. And then you revised that account and showed an amount in excess of -- A. Well, I --

Q. Let me finish. You filed an amended or supplemental first account, did you not? A. I think there was some restated first account.

Q. And in that did you not report the value of the estate, the personal estate exclusive of -- A. I think that it was listed at \$116,000 at that time.

Q. All right, sir. A. Stocks were going up, or something of that sort.

And it is to the interest of the attorney in the case --

MR. LASKEY: If the Court please, I submit the question has been answered.

THE COURT: I sustain your objection.

BY MR. LASKEY:

Q. Now I will ask you during the noon recess, Mr. Bird, to

examine the inventory of the appraised personal estate which was made by the officials of the Register of Wills, the court appraisers, and let me know after the noon recess if it is not a fact that there is no appraisal of this picture to which you have reference. A. I think you are

801 correct, and for any purpose I will concede it.

Q. All I asked you is, is that not correct. If you will admit that is correct it won't be necessary to do that.

Do you admit that the picture is not appraised in the estate? A. I have not seen it only in inventory and I will concede that it is not appraised on the estate.

Q. Now, Mr. Bird, I wish to direct your attention to the occasion about which you testified, I believe on yesterday, that you were at the office of the Register of Wills and that you there made some notes concerning -- at American Security and Trust, and that you there made some notes as to the securities contained in the estate.

Do you recall testifying about that on yesterday? A. Yes.

Q. As I understood your testimony, Mr. Bird, that was prior to your meeting with Mr. Sullivan. Is that correct? A. Yes. That was the Monday after Mrs. Jeffords' death.

Q. The Monday, the day of the funeral? A. Yes.

Q. And that was the day that you went to the American Security and Trust Company in the safe deposit box to get the will? A.

802

Correct.

Q. Who else was present? When you went into the safe deposit box. A. Some officials of the bank and officials of the Office of the Register of Wills.

Q. I understood you to testify yesterday that there was more than one official of the Office of the Register of Wills and a representative of the Inheritance Tax Division of the District of Columbia Government. A. Well, I don't know who was there. I know the Register of Wills was there and somebody came and, just like I told you, they got the will and I saw that and made some notes, and I think they made or called off

some stocks and bonds and what not.

Q. You say they called off some stocks and bonds. I would like you -- A. I don't know who it was.

Q. I would like you to be specific.

Well, you know the officials of the Register of Wills' office, don't you? A. No, I don't know. There are several of them and I don't know
803 the gentleman who did it. I wouldn't know him if he were to walk in here.

Q. Didn't you mention a name yesterday in your testimony? A. I don't know.

Q. I may be mistaken on that, but didn't you recognize him? A. No, I think not.

Q. Let me ask you this: There were in fact two occasions when you were at the American Security and Trust Company safe deposit box, were there not, with an official of the Court? A. Yes.

Q. And one was to get the will; isn't that correct? A. That was one -- there was one time when we went to get the will. That was before we took Mrs. Jeffords to -- before I signed up the papers for the undertaker.

Q. Now, Mr. Bird, directing your attention to the Plaintiff's Exhibit 6-B which is also a duplicate of Plaintiff's Exhibit 11, you have heard the testimony here by Mr. Sullivan that he made that list in your apartment on a day which you now fix as being December the 29th; isn't that correct? A. Well, I don't recollect my exact testimony, but I think that is what he testified to, or indicated that he thought was right.

804 Q. I am asking you about your testimony. You also fixed it on the 29th, didn't you? A. I say that Mr. Sullivan was --

Q. I am asking you about your testimony. This is a 1959 calendar, sir. (handing to witness). A. Well, I will say that it was the 29th.

Q. You do say that? A. I say that Mr. Sullivan came there on the 29th.

Q. And that that is the occasion that you turned over certain papers to him? A. That I turned over to Mr. Sullivan certain papers on that day.

Q. You also heard his testimony that he prepared that list, giving the number of shares, the name of the company, and the certificate number of some five securities? A. I heard him say that he had prepared this list.

Q. In your apartment? A. Well, I dispute that.

Q. Well, you heard him testify that, though? A. I think he did, yes. There is a letter attached to that, and I insist that that letter come in.

MR. LASKEY: All right. Let's have the letter.

805 THE COURT: You said five classes of stock?

MR. LASKEY: Yes.

THE COURT: Five categories. Not five certificates.

MR. LASKEY: No. I didn't mean five certificates. I meant five companies.

MR. LASKEY: Yes.

THE COURT: All right.

THE WITNESS: The one in the file has a red pencil mark there, I want that to come in.

MR. LASKEY: You are undertaking to dictate to me and to this court as to what is to come into evidence, Mr. Bird?

THE WITNESS: I want to give a full answer, even to you.

BY MR. LASKEY:

Q. You have heard this identified, then, Mr. Sullivan, as --

A. May I see the file on this, please?

Q. You are not willing to accept that as being a carbon copy?

A. Well, there is a file there that is marked "11", I think.

806 MR. LEEMAN: May the witness step down, Your Honor? It is in one of the files here that he has.

MR. LASKEY: It is in the court file.

That letter is in the court file.

MR. LEEMAN: Oh.

THE COURT: Any objection to his seeing the court file?

MR. LASKEY: No objection, except it is time-consuming.

(Court file handed to witness.)

THE WITNESS: Yes; this is a copy of it.

MR. LASKEY: At the witness' request I will offer this in evidence.

THE COURT: Is that agreeable to you, Mr. Leeman?

MR. LEEMAN: I have no objection.

THE COURT: Very well; it will be received in evidence, and you may read it to the jury.

(Plaintiff's Exhibit 6-A was received in evidence.)

MR. LASKEY: The letter is addressed on the letterhead of Charles B. Sullivan, Jr., Plaintiff's Exhibit 6-A, dated January 9, 1961.

Addressed: "Robert M. Gray, Esquire, Re: McCord vs. Bird; Civil Action No. 1746-60."

807

"Dear Mr. Gray:

"Attached hereto please find a photostatic copy of the one sheet previously referred to in my deposition and which was ordered exhibited to you.

"The first eleven items through "H" Bond in the amount of \$1,000 are all securities which were turned over to me by Mr. Bird with the un-assorted papers delivered to me in the early part of the day on December 30, 1959. This was immediately following Mr. Bird's return from Shreve, Ohio, on the 29th of December, and the burial of Mrs. Jeffords. These papers had been assembled from many points and neither Mr. Bird nor I have any knowledge that any of these securities were ever in the cedar chest.

"The 12th item on this list was merely a confirmation notice from the American Security and Trust that the bonds, as numbered, had been acquired for Mrs. Jeffords and were being handled by them.

"The 13th item on this list was merely a notation from the American Security and Trust that a certain note was being collected

and that a payment had been made thereon.

808 "The balance of the items are all savings account books which were acquired at a later date from the house of Mrs. Jeffords as was the last item, a check.

"As you will notice, the item testified about, that is, the Des Moines bond is not listed hereon. The Des Moines bond that was acquired with the second group of assets; that is, savings account books at the home of Mrs. Jeffords, and said certificate bore a letter from the company indicating that because of a receivership that the bond was worthless. Consequently, this bond was not listed as it apparently had no value. Subsequently, Mrs. Weis, in the appraisal division, determined otherwise.

"Your very truly,

"Charles B. Sullivan, Jr."

BY MR. LASKEY:

Q. Now you note from that Exhibit 6-B, that with respect to securities there is given the number of shares, the name of the company, and the certificate number, do you not? A. Yes. There are names and numbers here, and I assume they are what you have been claiming were in the cedar chest or something.

Q. Now, those certificate numbers are sometimes 6, 8, and possibly even more digits in number, are they not? A. I don't know.

809 Q. Well, look at it; it is right there before you. A. Well, there are different numbers here. Some large and some small.

Q. Well, I thought we could save some time.

May I see it for a moment? A. Yes.

(Handed back to counsel.)

BY MR. LASKEY:

Q. Can't you look at that, Mr. Bird, and admit that in each instance there are identifying letters, and in most instances more than six numbers? A. I don't dispute what these letters are.

Q. I thought you did. A. These letters speak for themselves. They are here.

Q. That is right. A. The point is, I am trying to make --

Q. Just a minute. You have answered the question. A. Well, I would like to explain this.

MR. LASKEY: I submit, if the Court please, this calls for no matter of explanation; it is a matter of how many numbers there are, or digits. That is all.

810 THE COURT: I will let the witness make an explanation if he has one to make.

THE WITNESS: The point I am making here is that this thing explains itself, in that letter, that this is not a copy of any sheet that was made in my apartment at that time.

MR. LASKEY: This is an argument, not an explanation.

THE COURT: I sustain the objection.

It can be brought out by your counsel on redirect.

BY MR. LASKEY:

Q. Now, Mr. Bird, in connection with Mr. Sullivan's testimony that the number of shares, the name of the company, and the certificate number, was put down on that paper, the original of that paper in your apartment on December 29 or 30, you as a lawyer know that that is significant testimony, do you not? A. Yes. But it couldn't be true.

Q. All right, sir. Now you also know -- A. Some of this couldn't be true.

Q. You also know now that it can be significant as to pointing to where those securities came from in order to be listed in that detail, do you not? A. No. No.

Q. Have you not been suggesting here by your testimony that those certificate numbers, and the identity as to the company and the number
811 of shares, came from a list made by you at the bank? A. No.

Q. Wasn't that the purpose of your suggesting it? A. No. The list I made at the bank came out of the safe deposit box.

Q. And that was March the 22nd. 1960, wasn't it? A. Oh, well, I am talking about January; I mean December.

Q. All right. Then you are suggesting that on December 28th at the bank you made a list of items which you copied from what you overheard called back and forth between the representatives of the Office of the Register of Wills; wasn't that your testimony yesterday? A. I made a partial --

Q. Let me complete the question. Mr. Frye can only take one down --

(Question read.)

THE WITNESS: I still don't know what you are getting at. You scold me whatever I say.

BY MR. LASKEY:

Q. I won't scold you.

It is not my province.

Let me ask you this: Did you not testify here yesterday that when
812 you went to the bank safe deposit box to get the will, you heard representatives of the Register of Wills' office calling out securities and that you tried to copy them but you couldn't follow them entirely but you got some of them down? A. That is right.

Q. There was more than one representative of the Register of Wills' office present at that time on December 28th? A. I think so. There were bank officials there.

Q. How many officials? A. I don't know how many. There was a man named Ailes; I remember that. I remember his name.

Q. You know Mr. Spellman? A. Yes, I know him.

Q. And he was there, wasn't he? A. I am not sure. I seen him later but I am not sure he was one there that morning or that day.

Q. Was there more than one representative of the Register of Wills? A. I wouldn't say. I wouldn't know.

There were three or four persons there.

Q. There was a representative of the bank, yourself, and a re-
813 presentative of the Register of Wills' office, either Mr. Spellman or someone else. That is all; wasn't it? A. That is right.

Q. Those were the only three there? A. No. I won't say that. I don't know who all was there. There might have been more. There were several people buzzing around there.

Q. What do you mean, buzzing around? You were in one of those little rooms off the safe deposit department, weren't you? A. Now don't scold me.

Yes; I was there. And they took the box out of the --

Q. Took it out of the vault and you went into one of the small cubicle rooms, did you not? [A.] I don't know how small it was, whether that was a different-size one or not. We went into a little room, yes.

Q. Now, who was buzzing around? A. Well, all of us. There were not enough chairs or anything there. We had to get some chairs to get arranged. You know how you get around a table, -- the table is much smaller than these here in the court room. Trying to get some place so everybody could make a note or do some writing, and the space was not sufficient.

814 Q. Bear in mind, I am talking about December the 28th. A. That is it. I am still with you on that.

Q. All right. And there were only three of you there on that occasion, weren't there, including yourself? A. I don't know. I think there were at least -- there were several others there in the beginning or before we started.

Q. I am talking about the time now when you went into the private room to open the safe deposit box which had been gotten from the vault. A. Well, Mr. Laskey, I don't know how many were there. I know there was a representative of the bank and a representative of the Register of Wills, and I was there. Now there might have been a couple more persons there; I don't know who they were.

Q. But your only specific recollection is of the three persons you have named, including yourself? A. No. I don't identify any of them. As I say, I do know about the man whose name was Aiels.

Q. He represented the bank, did he not? A. I think so.

Q. Now, is it your testimony that there was a listing of the securities which were contained in the safe deposit box at that time on
815 December 28, 1959? A. I think there was, at least a partial listing. There was some notation made of it.

Q. And -- A. Let me answer that.

Q. All right. Go right ahead. A. I think that that was an unofficial listing; that they had to do that by an appraiser some time later on.

Q. But you are testifying that there was a listing at that time, at least partial? A. They called them off, yes; and somebody was writing them down besides, and I couldn't --

Q. Who called them off? You have identified three people being there, including yourself. A. I haven't identified three people. I just told you there were three people there.

Now, Mr. Laskey, this is -- I don't know what to say about this, but you are twisting around here, your twisting around here is most confusing to me.

Q. I don't mean to confuse you, sir.

I think you are confusing me.

Now, was there a listing, at least partial, of the securities at that time? A. I think there was. I didn't receive a copy of it.

816 Q. But you testified yesterday that you wrote down what they were calling off to each other as far as you were able? A. Yes --

MR. LEEMAN: Your Honor, I think this has been explored upside down and backwards, and I think Mr. Laskey has pursued this as far as he should, in fairness to the witness.

THE COURT: Overruled.

(Record read.)

BY MR. LASKEY:

Q. And what did you do with that list? A. I put it in my pocket.

Q. And was it not your intention to suggest to this court and this jury that it was from your list that Mr. Sullivan got the names of those

companies and the certificate numbers and the number of shares? A. No; Mr. Laskey, it is not. Not by any stretch of the imagination.

Q. Now there came a time; in fact, the next time that you or anybody else was able to get to the box was after you and Mr. Keith had been appointed and qualified as executors; isn't that correct?

817 A. Yes.

Q. Because you know it to be the fact that once the will is gotten out of the box, nothing is taken out, nothing is added to it and it is put back and no one can get there again until the executors are appointed. Isn't that right; based on your experience? A. Well, that is supposed to be the way of it. But there are lots of people looking into these safe deposit boxes these days.

I don't know. You are asking me something that I don't --

Q. You are asserting as a fact that lots of people who are not authorized are looking into safe deposit boxes these days and do you mean to infer that someone got into the Jeffords safe deposit box without your knowledge? A. I don't know; I wouldn't say that. But we have the CIAs and a lot of other snoopers. I don't know what they do.

Now you are asking me to swear to something that I don't know about.

They used to do it over --

Q. My question to you was based upon your experience as a lawyer, and do you not know, based on that experience, that once a box is opened and the will is taken out, there is no further access permitted to that box until the executors are appointed? A. That I understand

818 is supposed to be the practice.

Q. But you don't believe the practice is followed? A. Well, I don't know. There are certain exceptions.

Now, the Internal Revenue Bureau, and CIA -- now, you know about the Fenning case, don't you?

Q. No, I don't and I don't think it has any bearing on this? A. Well, I --

Q. Do you know the facts of your own knowledge? A. I read it in the Congressional report.

Q. Do you think that makes it a competent factor for you to testify to?

I object to this explanation, Your Honor.

THE COURT: Sustained.

BY MR. LASKEY:

Q. Now the next time that that box was opened was on March 22, 1960. Isn't that correct? A. I don't know the date.

Q. It was after you and Mr. Keith had been appointed and qualified as executors? A. Well, so far as I know, that is the first time, the next time I was ever down there.

819 Q. Without being specific as to the date there did come a time after you were appointed and qualified that you went to the box for the purpose of opening it and listing its contents; isn't that correct? A. Well, there was to be an appraisal and the Court had to do that; the Probate Court.

Q. But that is the next time you went to the box? A. Yes.

Q. And at that time do you recall who was present? A. No. I know that Mr. Keith and I were present and Mr. Sullivan, and I think Mr. Spellman was there, but I don't know, and I think there was a woman --

Q. Do you know an Evelyn Weis, from the Register of Wills' office? A. I have seen her name; and I don't know; I am not sure that I would recognize her.

Q. The woman you have identified was a representative of the Office of the Register of Wills, was she not? A. Well, I think she was. I accepted that as a fact.

Q. Do you know Mr. Wallace of the D. C. Inheritance Tax Department there -- A. As I recollect -- they were supposed to be. We tried to get them both there, the federal and the Probate Court, and the D. C. tax people -- we tried to get them all there.

820 Q. And at that time there was a listing and appraisal of the stocks -- the contents of the box? A. Yes. There was a listing made

but I didn't see it made up. They take those things and type them up some other place.

Q. They didn't take them away from the American Security Bank, did they? A. They take their notes; I mean their records.

Q. That was the time they made a listing of the contents of the box and that you heard them calling the numbers and names of the securities back and forth; isn't that correct? A. No. At that time I didn't attempt to do anything. They were all officials there then. I didn't want any -- I don't need to know anything about it. Whatever they turned out that was it.

Q. Now, if I am not mistaken, you testified yesterday that this Exhibit 6-B could not have been made up by Mr. Sullivan at your apartment on December 29 or 30, for certain reasons, one of which you enumerated to be that, the fact that the Bacot note [Baycot] was not then available? A. Well, that was no information -- no information
821 about that, that is one of the reasons.

Q. But Mr. Sullivan's letter and his testimony indicated that the listing with respect to the Baycot note was not that the note itself was there. Isn't that correct? A. I don't recollect his testimony exactly, except I think he indicated that he made this sheet of paper at the apartment that morning, of which this is a photocopy, and I am telling you that he might have made some notes on that, but the information that is contained on this and confirmed by his letter was not obtained at my apartment.

So he couldn't have made a sheet like this at the apartment because the information was not there.

Now he might have had some notes.

Q. Didn't you say yesterday that he couldn't have made that listing at your apartment because the note was not there, it was in the bank of collection? Didn't you testify to that, sir? A. Well, I think so. That is one of the reasons.

Q. Now, that is not a valid reason, is it? A. Well, not standing alone, I wouldn't swear to it, but I still am very firmly of the opinion

that the information there was obtained much later from other sources that is on here, in addition to, I don't know where this information was
822 but I didn't see it, we didn't organize that business up there that day.

He took that stuff out in one of his briefcases, in an envelope. There was no business organized there. There was no listing of anything. I gave him the list which I had made of the stocks and the identity of the persons mentioned in the will, and I gave him a list of the persons to whom Mrs. Jeffords was related, who should have legal notice, so he could make up his advertising or make up a petition.

You can't get any of this money, you know, until it goes through the processes of the court, and that is the first thing first.

Q. Where did you get the list as to the identity of the stock which you said you had? A. Now what are you talking about?

MR. LASKEY: Read back the question.

(Record read.)

BY MR. LASKEY:

Q. Now, in that long answer you referred to a list that you had made up as to the identity of the persons.

In so far as the list which you had made contained reference to securities, when did you make that list? A. Down in the safety box of the American Security and Trust Company, on the morning of Mrs.

823 Jeffords' funeral.

Q. And how did you make that list? A. I think with a pencil on a yellow sheet.

Q. And did you examine certain documents and write down, or did you hear someone call something out and write it down? A. Well, I heard them called off. I wasn't probably writing them down correctly at all but I got them phonetically.

Now, there are many of those names that I wouldn't know exactly how to spell or designate. Johns-Manville, I don't know whether I can spell that or not.

Q. How about certificate numbers? A. Well, I didn't go into all that; I don't think I did.

Q. You didn't write down any certificate numbers? A. I don't think so.

Q. All right, then. If Mr. Sullivan made this list 6-B in your apartment on the morning and had the certificate numbers and the exact number of shares which is a duplicate of what is shown in your account, he had to have gotten that from the certificates themselves, did he not? A. I don't know. I don't see how you could -- there are all kinds of records of certificates. Mrs. Jeffords had an index -- had a list every year of all of her assets. She took an inventory every year.

824 Q. Did you give that to Mr. Sullivan on the morning of June 29th -- December 29th? A. I don't know whether I did. I may have.

Q. Did he copy those certificate numbers down from that list? A. He didn't -- as far as I can recollect he did not.

He made some notes but I don't know what he was writing down, and he didn't stay very long.

He came about noon, I think, or shortly before noon. I hadn't had my breakfast. And I hadn't been expecting him.

THE COURT: Is this a good stopping place, Mr. Laskey?

MR. LASKEY: Yes, Your Honor.

THE COURT: We will recess for lunch until 1:45.

(Whereupon, at 12:30 p.m., the trial recessed, to resume at 1:45 p.m., of the same day.)

825

AFTERNOON SESSION

1:45 p.m.

* * * *

JAMES F. BIRD

resumed the stand, and, having been previously duly sworn, was examined, and testified further as follows:

CROSS EXAMINATION

BY MR. LASKEY:

Q. Mr. Bird, there has been a partial distribution of the estate of Laura Jeffords, has there not? A. Yes.

Q. And it is a fact, is it not, that some of the persons who received specific bequests had pre-deceased Mrs. Jeffords and that their bequests fell into the residue of the estate? A. Yes.

MR. LEEMAN: Your Honor, I have no objection to him answering but I think it is irrelevant and immaterial.

THE COURT: What is its relevancy, Mr. Laskey?

826 MR. LASKEY: I intend to show the interest of this witness in the estate and the extent of it.

THE COURT: Oh, because of his interest as a residuary legatee?

MR. LASKEY: Yes, your Honor.

THE COURT: Overruled.

BY MR. LASKEY:

Q. And there has been a partial distribution to you and Mr. Keith as residuary legatees; is that correct? A. Yes.

Q. So far you have received something in excess of \$15,000, you personally? A. I believe so. I can't tell you, but I believe that is right.

Q. And there is an undistributed balance held in the amount of what, approximately? A. I don't know. You will have to get the record, and we can't tell with all this litigation pending. The record explains that. Attorneys' fees to be paid, and we don't know.

Q. Well, you now hold for future accounting subject only to unpaid expenses and attorneys' fees, an amount in excess of \$40,000; is

that correct? A. That is if we -- I think that is probably correct if
827 we get all the outstanding assets in free and clear of this litigation. But that would be subject to attorneys' fees and court costs and so forth.

THE COURT: Wouldn't that also be subject to distribution to certain of the legatees to whom distribution has not been made?

MR. LASKEY: May I ask to clarify that?

THE COURT: Yes.

BY MR. LASKEY:

Q. There are no legatees who are alive other than you and Mr. Keith to whom distribution has not been; is that correct? A. I don't know what that last account shows. I don't know of any -- I think we have distributed to everybody except the residuary legatees.

Q. All right, sir. A. Now I want to say that -- well, excuse me.

Q. And among the assets of the estate was a note of yours. Had you borrowed money from Mrs. Jeffords during her lifetime? A. I had during her lifetime. I borrowed \$600 to pay my income tax with. I paid part of it off of what was due, and it was not due until after death and I paid it off. That is one of the things Mr. Gray was interested in.

828 Q. At the time of her death you were indebted to her in an amount in excess of \$400; isn't that correct? A. I think so.

Q. And when you say Mr. Gray was interested in that you mean he asked you about that on your deposition? A. Yes; when he came over to Mr. Sullivan's office -- that is one of the first things --

Q. You don't mean he had a financial interest in that in any way? A. He came over and asked all of that.

Q. Could you answer that, you did not mean that he had a financial interest in that in any way? A. Well, he had made no personal claim on it but he was nosing into it, trying to embarrass me, asking questions about it.

Q. Did you consider those questions improper? A. Yes.

Q. Okay. A. The record shows the record was clear. There was no dispute about it.

Q. Do you refer to only one occasion when Mr. Gray came to Mr. Sullivan's office with respect to the Jeffords' estate? A. No.

829 The only thing I saw him in there about was twice, but there was one time when he was coming up the elevator to see Mr. Sullivan, and I wouldn't stay, I didn't want any part of it.

Q. Now when he came to Mr. Sullivan's office to examine the documents which were there; that was after the court had had entered an order requiring you and Mr. Sullivan to show them to him, was it not, as he referred to in his letter? A. I believe so. But after I had given Mr. Sullivan blank authority to show him.

Q. But things weren't shown until after the court ordered them to be shown; isn't that correct? A. I think now. I had nothing to do with that. That Mr. Sullivan overruled me on that and didn't show them.

Q. My question was, nothing was shown to Mr. Gray until after the court ordered that it be done; isn't that correct? A. I think that is correct.

Mr. Gray knew what was in that file before he went there to inspect it with Mr. Sullivan. That was evident.

Q. It was evident to whom? A. To me.

Q. From what was that evident? A. That he knew what to ask
830 for and where to pick it up.

Q. You mean the securities that he knew that Mrs. McCord had turned over to you? A. No. There were no securities there at that time. Everything was in the stockbroker's hands.

Q. There has been marked in evidence here as Defendant's Exhibit 4, the chart which Mrs. Michalka identified. You will recall that that chart was produced on the second day Mrs. Michalka appeared. Isn't that your recollection? A. I don't know what you mean now.

This chart shows -- speaks for itself.

MR. LASKEY: Read that back.

(Record read.)

THE WITNESS: Here in court?

Q. Yes. A. Yes. I think so. My recollection is just the same

as yours on that. I think --

Q. And you had asked, after we had completed our direct examination of Mrs. Michalka, and Mr. Leeman had examined her to some extent, you would ask her to stay over and to examine her again on the following day, and on that day Mr. Leeman showed her this chart. A. Well, I think Mr. Leeman asked her to do that, probably at my suggestion.

831 Q. Very well. A. Because he had overlooked as owing her something.

Q. My question was, on that second day Mr. Leeman produced the chart. Isn't that right? A. I think so.

Q. Where did he get it from? A. We got it out of the bank, the safe deposit box in the bank.

Q. In whose name was that box? A. Mr. Leeman's and my name.

Q. And when had you placed it there? A. Well, that was a day when we got some papers from Charlie Sullivan.

Q. And had the chart been in Mr. Sullivan's possession? A. Yes; I think so. He brought it there.

Q. How did he get it? A. It was originally in the dining room, Mrs. Jeffords' apartment, on a table, together with that description of Richwine. That is where it was originally.

Q. Then you got it and gave it to Mr. Sullivan; is that correct?

832 A. Well, whether he picked up or whether I gave it to him I don't recall, but that is where it was.

However, there may have been more to it than this. There was a scramble for getting these charts and I didn't know why.

Q. Who was scrambling? A. Well, there was a nurse called Wilhite, and I understood that Mrs. McCord was eager to pick up these charts.

Q. Who told you that? A. Well, I heard it myself from Mrs. McCord.

Q. When did she tell you that? A. She was wanting to find these charts.

Q. When was this, when did this conversation take place?

A. Well, that was after the house was closed, about the 8th or 9th of --

Q. Who closed the house? A. I did.

Q. And when was it with respect to that that you gave this chart or found this chart and gave it to Mr. Sullivan? A. I don't know. We may already have had it at that time.

Q. But from the time you got it until it was produced here in court it was in the possession of you or your attorneys; isn't that correct? A. Well, I don't know who else had it. I don't know whether -- what became of those first pages, and they would show Wilhite. I know she had her hand up.

Q. This is the chart Mrs. Michalka identified. That is the one I am asking you about. A. That is right.

Q. And the one she testified had other pages before December the 20th? A. Yes.

Q. I am going to ask you what you know about those missing pages? A. I don't know anything about them. It is my recollection I don't know that I even saw them.

Q. You thought it important enough to pick up and turn over to your attorney and put it into a safe deposit box. Did you ever look and see if the pages were there for the 17th, from the time Mrs. Michalka came on the case? A. I asked Mr. Sullivan what became of those other pages. He says, "I don't know."

Q. Well then, did you know that there were other pages? A. Well, not positively. I am quite sure there were.

Q. You are quite sure from your own examination? A. I was there in the sick room and saw them making those charts. No; I never saw them, but I couldn't say that I had ever seen them.

Q. But you told Mr. Sullivan there were missing pages. A. I asked him, "Where are the other pages?"

Q. And the chart from that point, from the time you got it up, had never been in the possession of anyone else but you or your attorney; isn't that correct? A. I don't know. I don't really know. Mr. Sullivan had things over in Virginia; and he went and saw this Wilhite several times and saw this Sarah Cole over in Virginia, and had to go around and see these people. I don't know what became of it.

I know Wilhite wanted something.

And Mrs. McCord wanted them.

Q. All right now, tell us where and when you had any conversation with Mrs. McCord when she asked you for that nurse's chart or even knew about it? A. It was over there at the house about the time she gave me the key, and she was asking for those charts.

Q. Who else was there? A. I think that Ellie was the only one there at the time, if I remember right.

835 Q. Was Mr. Sullivan there? A. No. And we also had this Rochambeau woman, had quite a controversy about it.

Q. She had her own chart, didn't she? A. She had, and she refused to give it up. The agency who had sent her on the job, through Mr. McCord, tried to get her to turn the chart over. She said those nurses' charts -- she had been a graduate nurse and a registered nurse, and she said, "They belong to the nurse".

Q. All right. A. And she is over at Saint Elizabeth's but she can still remember that. Her mind isn't so bad. She is just feeble.

Q. Now, Mr. Bird, in the course of that answer you stated that the agency had sent her through Mrs. McCord. By that do you mean to suggest to this court and this jury that there was something improper in Mrs. McCord's getting a nurse through an agency for a sick woman?

A. No.

Q. And if not, why did you inject it into the case at this point?

A. No; but there was a controversy there who was entitled to the chart.

836 Mrs. McCord had obtained permission from Doctor Richwine to be in charge of nurses, and she --

Q. What do you mean, "in charge of nurses"? A. Well, that is whatever the word means. It was in Doctor Richwine's presence and Mrs. Rochambeau was there. It was the day before Mrs. Rochambeau left. And Wilhite was going to come back, and Doctor Richwine says, "Now, let's have Mrs. McCord in charge of nurses". She wasn't nursing but she was going to be in charge of nurses.

Q. Was there some dispute among the nurses from time to time as to who was to work what hours? A. Yes.

Q. And that required some organizing, did it not? A. Well, I don't think it did.

Q. Did you undertake at any time to get any nurses? A. I made some telephone calls, yes.

Q. Who did you call? A. I called some -- I don't remember; some agency or other.

Q. You called an agency? A. Yes.

Q. Which anyone would do to get a nurse? A. And I could get some from a colored agency and Estelle wouldn't have that. I did get a cook, a colored cook.

Q. Who had worked there before? A. No. Had two colored cooks. One of them had worked for Eugene Meyer, and then they got another one, she wouldn't stay.

Q. And Mrs. McCord had undertaken from time to time to get nurses through the agencies, had she not? A. Well, I suppose so. She called. I don't know what arrangements she had.

She got one woman named Penny Timmons, who was not a nurse, who had been Doctor Richwine's patient, and was accustomed to taking care of old ladies who needed medicine, pain killers -- named Penny Timmons.

Q. This prescription blank, and this also you had put in the safe deposit --

THE COURT: What is the number of that?

THE WITNESS: Defendant's Exhibit 5, your Honor.

MR. LASKEY: Defendant's Exhibit Number 5 for identification.

BY MR. LASKEY:

Q. You also had that put in the safe deposit box, did you not?

838 A. That is right.

Q. That is the only prescription that you had, isn't it? A. That is the only one I saw there.

Q. And you had picked that up at the same time you picked up the chart, as I understood you? A. That is right.

Q. Now you have made several references to narcotics, Mr. Bird. Do you know how often this demerol was prescribed and how often it was administered? A. No. I don't; and the first time I noticed injections being made was by Wilhite, the nurse Wilhite.

Q. Do you know Mr. -- A. I don't know what was in the injection. I doubt if they used any medications on Mrs. Jeffords but they went through the motions. I think they were using the stuff for themselves.

Q. Who do you mean was using the stuff for themselves? A. Well, the dope.

Q. Didn't you mean to suggest that Mrs. Jeffords was, as you said, if I recall you correctly, was full of narcotics, or was full of demerol? A. No. I think that she did have medication but --

Q. You just said you thought they were using themselves and she
839 didn't get it. A. I do. I think that is what they got it there for. Mrs. Jeffords had no pain. She told me she didn't have any pain.

And the type of illness she had would reflect she was not suffering pain.

Q. Do you know that the doctor's orders in his handwriting on the chart showed that he ordered the demerol for her, do you not?

A. That is right; he did.

Q. Did you make any effort to inquire that the dose of a half cc of demerol is about as mild a dose as anyone could get? A. No; that is a mild dose but for a feeble person it is another thing. I don't know what -- by injection -- mainline, or what they call it "mainliners."

Q. Is that what was being given to Mrs. Jeffords? I mean, you are indicating that Mrs. Jeffords was an addict, a mainliner? A. Oh, no.

Q. Well, why would you inject that into your answer, Mr. Bird?

A. Well, I say when you inject by injection -- you know enough about
840 medicine to know that injection goes right direct rather than if
you take medicine orally, proper. It goes right into the bloodstream.

Q. I know medically if you say medicine is to be administered
hypodermically it is in the bloodstream. I also know, as you know,
that when you are talking about dope addicts you talk about mainliners.

Now why did you inject that into this case? A. I didn't say any-
body was a mainliner. If you get it through the bloodstream, you get
it as a mainline injection.

I would like to clear that up for you.

MR. LASKEY: I think the question has been fully answered, if
the Court please, and I don't think there is any further explanation
called for. I object to any voluntary statements.

BY MR. LASKEY:

Q. Now you said, if I understood your testimony correctly this
morning, that you had a discussion with Mr. Sullivan and that you sus-
pected that there was a conflict of interest between Mr. Sullivan and
Mr. Gray.

Did I understand you correctly? A. Yes.

Q. And what did you consider that conflict of interest to be?

A. Well, if Mr. Sullivan were working with Mr. Gray and collaborat-
841 ing with Mr. Gray on certain business, I think that should pre-
clude him from representing us in a case of this type.

Q. Well, you knew that Mr. Gray and Mr. Sullivan had an office
arrangement, as you said, in 1948 or '49. You knew that at the time
you hired Mr. Sullivan, isn't that correct? A. Oh, I knew, yes; but
I didn't know -- Mr. Gray came into this thing six months later, as far
as I was concerned. Somebody fished around and found out a friend of
Mr. Sullivan, hired for an attorney. That was evident.

Q. You mean that someone fished around and got -- you are in-
tending to make that as a charge here against a member of the Bar of
this court -- A. Well, I --

Q. Wait a minute and let me finish my question.

You are intending to charge a member of the Bar of this court was brought into the case because he had some influence or persuasion over Mr. Sullivan; is that what you are attempting to charge, Mr. Bird?

A. I am saying it is consistent with such a charge.

842 Q. And that is why you are mentioning it? A. It is consistent with such a position, and in the light of things that follow there was a conflict of interest.

Q. What was the conflict of interest, Mr. Bird? A. Well, Mr. Sullivan wanted me to become -- after Mr. Gray came into this case six months later, from nowhere, Mr. Sullivan then merely suggested, "Let's settle the case, they want to settle", and that's no -- you know what those employments -- that is an old swamp trick between Mr. Sullivan and Mr. Gray here? A. I think so.

Q. Well, we just want to make it clear. A. I think Mr. Gray never should have engaged in a case against Mr. Sullivan when he was at the same time representing people in association with Mr. Sullivan.

Q. Mr. Bird don't you know as a member of this bar for a long time that lawyers at practice at this bar are sometimes associated on the same side of a case with an attorney, and at the same time may be opposed to him on another case. Did't you know that to be a fact?

A. Well, --

Q. Can you answer that yes or no? A. It is done with reservations.

843 Q. But you knew all of these facts? A. With full disclosure to the clients; and there was no full disclosure here whatsoever.

Q. All right; your testimony here. A. Now, that --

Q. All right; go ahead. A. That case that Gray filed, that suit, that had been very carefully drawn and studied, the complaint.

Q. You mean this suit here? A. The complaint; yes.

Q. The complaint in this case? A. Yes. That required meticulous care in the wording and the arrangement of it, and it had gone on for some time. I am sure that was not dashed off.

Q. Well, doesn't every pleading that a lawyer prepares require some time and meticulous preparation, Mr. Bird? A. Well, not every pleading, no.

Q. You did, though, according to your testimony -- and I am following you in the chronological order in which you gave the testimony -- you did have the discussion with Mr. Sullivan and suggested to him that there was a conflict of interest, and you have been telling us here now what you considered that conflict to be. Am I correct in

844 A. Well, yes; and there were some other things.

Q. All right. What else were there? A. There was the injunction. Mr. Gray had asked for an injunction.

Q. Isn't that done every day? A. Well now, I -- that is not -- wait a minute and I will tell you what.

And he asked, but he didn't put up a bond.

Now when you file an injunction suit to tie things up for somebody, the rules and the Code require you to put up a bond.

Q. After the court grants the injunction, as was done in this case, and the bond was fixed in the injunctive order in this case, was it not?

A. Now wait a minute. That was not done in this case. That lingered a long time. Mr. Sullivan wanted us to put up an additional executor's bond.

Now, there is a paper in the file. And also, he was in default down here before Judge Walsh and he got Mr. Clark to go down and straighten it up, and they made a consent order for a hundred-dollar bond which is supposed to cover all damages and costs, including attorneys' fees.

Now, is there any difference in that, he asked for -- he had
845 \$7,000 and he asked for \$13,000 additional, and he had only a hundred dollar bond up which was, he had given by consent.

I think that was all out of line. I jumped him on that and later on, after Mrs. McCord moved out of the District, I asked him to "see if you can't do something further about that bond; get an injunction bond,

there are big attorneys' fees in this case."

So he did prepare a paper. He went down and got a cost bond but they didn't raise the injunction bond.

Now that was in the light of Mr. Sullivan's charges for attorneys' fees which should have been bonded by the plaintiffs.

I asked Mr. Sullivan, I said, "Will those people continue this case if they have to put up a bond?"

He says "Oh, yes; they will do that."

Q. Now you have gone on for quite some time, Mr. Bird, and all of this was in response to my question that you specify what else you thought indicated a conflict of interest. A. Well, he got this Mr. Slater Clark in there on the case.

Q. Who got him in? A. Charlie Sullivan.

846 Q. What has that got to do with Mr. Gray? A. Well, he and Clark and Gray and Sullivan were just like that (indicating).

Q. You have your own specific knowledge of that? A. And McCord was over at the club. We have their depositions.

Q. Do you know how many members there are in the Congressional Club? A. Well, --

Q. Something in excess of 1500 or 2,000? A. We aren't on chummy terms. Mr. Clark's daughters was in some of Mrs. McCord's organizations over there, I don't know what it was.

Q. So this was something improper between Mr. Sullivan and Mr. Clark; is that correct? A. I won't say improper; but I thought it wasn't a very healthful relationship.

Q. And this is all what you had in mind when you had your conversation with Mr. Sullivan about the conflict of interest; is that correct?

That is what I have been asking you. A. I don't know whether it is all or not.

I have seen Mr. Sullivan asked me, he says, "You have been snooping around, have you?"

847 I asked him about his papers being safe over there, with Gray in the office, in and out of the office, and I didn't like that. But we didn't

fall -- I mean we didn't have a breakup over it.

Mr. Keith had an interest in this case, and I was interested in bringing it through, and we asked Mr. Sullivan to stay --

Q. After you suggested to him that there was a conflict of interest you asked him to stay in the case; is that correct? A. I asked him what --

MR. LASKEY: Could I have the question read? I don't think the witness is responding.

THE COURT: Very well.

(Question read.)

THE WITNESS: There had been, yes.

BY MR. LASKEY:

Q. Is your answer to that question yes? Then you can go ahead and explain it. Just please for once give us an answer. A. No, it wasn't after. It was when he agreed, and asked in response to Mr. Keith's request or suggestion, he says, "Charlie, can't you give Gray a kick in the pants and continue to represent us and finish up this case?"

848 Q. Didn't that conversation follow your discussion with Mr. Sullivan about a supposed conflict of interest? A. I had a discussion with him before that. Mr. Sullivan says yes, he could do it.

So Mr. Keith went on home, and he asked me to make a full memorandum of that. Those are the exact words that he said.

Q. Now, Mr. Bird, you were at Mr. Sullivan's office when Mrs. McCord came down there at either your request or Mr. Sullivan's request -- I believe Mr. Sullivan's request. A. Yes.

Q. Shortly following the time you had gone to the house and gotten the rings? A. Yes.

Q. Now when you were at Mrs. McCord's house, you saw the rings? A. Yes. I saw what she handed to Mr. Sullivan. I was present.

Q. And you saw him make a list of them and give her a receipt for them? A. I saw him make a list, yes.

Q. But at that time you did not say anything at all about any ring being different from the rings you had seen before; is that correct?

849 A. That is correct.

Q. Now as I understand the testimony in this case -- A. I noticed it, though.

Q. As I understand the testimony in this case, sometime after that Mrs. McCord was asked to come down to Mr. Sullivan's office?

A. Right. I didn't ask her. I got in there and she was in there. I was in there with Mr. Keith when she came in.

Q. Is that a large office or a small office? A. What?

Q. Is that a large office or small office? A. Small office. Just a cubbyhole.

Q. And you were there and Mr. Keith was there and Mr. Sullivan was there? A. Right.

Q. You sort of outnumbered the lady, didn't you? A. Well, you are a mathematician. 3 to 1, or 2 to 1. 3 to 1.

Q. Now you heard Mr. Sullivan start asking Mrs. McCord and she responded cooperatively? A. Was that a question?

Q. Yes; that was the question. A. I didn't follow it.

850 MR. LASKEY: Read it back, please.

(Record read.)

THE WITNESS: I don't know. No, it wasn't cooperatively. I would say she hedged.

Q. And you then injected yourself into the questioning; is that correct? A. No; I didn't ask her any questions at all.

Q. Did you not ask her any questions at all during that entire interview? A. I don't think I did. I made some --

Q. Can you say whether or not you did? A. No; I can't say for sure.

Q. But you don't think that you did. A. I don't think I did. I made some statements.

Q. Were the statements accusatory in nature? A. I wouldn't consider them so.

Q. What were the statements you made? A. I told her that after we had left her house with those rings, we had been out to see May

Fleming, who wanted the big diamond ring and expected Mrs. McCord to deliver it to her, because Mrs. McCord -- she said we had given Mrs. McCord the three-stone diamond ring.

That was a nice little ring, with three good stones.

851 Q. You are saying you told Mrs. McCord that you expected her to produce the three-stone diamond ring; is that what you are saying?

A. No; I asked her what had become of it.

Q. Did you use the expression as you did in your testimony, that it "turned up missing"? A. Yes.

Q. And do you not consider that to be an accusatory statement under those circumstances with you three men questioning this lady in this small office? A. No; I didn't think so.

Q. All right, sir. A. Mrs. McCord is a pretty tough customer in her own right.

Q. I understood you to testify here earlier today with respect to the two bonds which is the subject of your cross-claim, that you had information that these items were missing before the time of Mrs. McCord's deposition, and that you had this information from the bank inventory and from some other sources and I think you mentioned an investigator.

Do I correctly recall your testimony here today in substance?

A. Well, yes; I think we had information that those bonds were missing, and other items.

852 Q. All right, sir. A. From Mrs. Jeffords' own inventory.

Q. And that is your testimony here today under oath, that before Mrs. McCord's deposition you had information that these bonds should have been in the estate and accounted for; is that correct? A. We don't know where they were. We did not know where they were. We did not know where they were and what had --

Q. And you testified here under oath that you had information concerning these specific bonds that you have sued for, prior to the time that Mrs. McCord testified on deposition. Can you answer that

yes or no and then explain it if you wish? A. No, I can't answer that yes or no.

(Question read.)

BY MR. LASKEY:

Q. Can you answer the question?

Can you answer the question? A. I thought -- oh, that is the question?

Q. Yes. A. The only way I can answer it is that we had made a check of Mrs. Jeffords' assets and there were bonds missing. There were other items missing. And it is my impression that these two items were outstanding, and we think many more.

853 Q. Reading to you from page 65 of your deposition: "Question: Do you have any records or memoranda, notes, any writing which in any way pertains to the two five thousand Treasury bonds about which Mrs. McCord testified the other day?

"Answer: I do not.

"Did Mrs. Jeffords ever mention these two bonds to you?

"Answer: She did not.

"Question: Did she ever mention"--

A. Could you take those up one at a time? I am not following through.

MR. LASKEY: If the Court please, I think I am entitled to conduct the examination.

THE COURT: You may proceed.

"Question: Did she ever mention any arrangements she might have had with Mrs. McCord about these bonds?

"Answer: She did not.

"Question: Did anyone ever give you any information about them?

854 "Answer: No one ever did. It knocked me off my feet when I heard Mrs. McCord testify she had the bonds and gave a \$25 check for them and let them stay in the possession of Mrs. Jeffords and the coupons were cut and put to Mrs. Jeffords' account. That was the first inkling I ever had of any such situation."

Did you give those answers to those questions on that occasion?

A. Yes, and that is correct.

Q. Thank you. A. We knew that bonds were missing or that items had not been found. We had no idea that Mrs. McCord had them.

Q. And that is what you meant that "that was the first inkling I ever had"? A. That is the first inkling I ever had that Mrs. McCord had any of those things; that is correct.

MR. LASKEY: That is all I have, your Honor, of this witness.

THE WITNESS: That is correct. That is absolutely correct.

REDIRECT EXAMINATION

BY MR. LEEMAN:

Q. Mr. Bird, Mr. Laskey questioned you about this list that Mr. Sullivan prepared and also about the letter of Charles Sullivan to Mr. Gray which he had introduced in evidence as Plaintiff's Exhibit 6-A?

855 MR. LASKEY: Which the witness asked me to have introduced into evidence, Mr. Leeman.

MR. LEEMAN: Well, regardless, you introduced it in evidence. It is Plaintiff's exhibit.

MR. LASKEY: That is correct.

BY MR. LEEMAN:

Q. Mr. Bird, from this letter is there any indications in that letter that you can point out to the jury to the effect that some of these securities could not possibly have been in that cedar chest? A. No; that isn't --

MR. LASKEY: If the Court please, I think the document speaks for itself.

THE COURT: Overruled.

THE WITNESS: All I was trying to point out is that I am firmly of the opinion that this is not a photocopy of any paper that was made at the apartment on the 29th, or whenever it was I first saw Mr. Sullivan.

The paper itself has to be taken in consideration with this.

I know that -- that is the first time I ever saw Mr. Sullivan, directly referring to this case, was the 29th. He had never been to the house --

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857

BY MR. LEEMAN:

Q. Which house do you mean? A. Mrs. Jeffords' house. He had never been where there was any other property.

Now he has listed on this paper "other property", on this list, and he says he made it that morning.

Well, now, in his letter he says, "The balance of the items are all savings account books which were acquired at a later date from the house of Mrs. Jeffords, as was the last item they checked, as you will notice the item testified about, that is, the Des Moines bond is not listed hereon.

The Des Moines bond was acquired with the second group of assets, that is, the savings account book at the home of Mrs. Jeffords, and said certificate bore a letter from the company indicating that because of a receivership that the bond was worthless. Consequently, this bond was not listed as it apparently had no value. Subsequently, Mrs. Weiss" -- W-e-i-s-s -- Mrs. Weiss, "in the appraisal division, determined otherwise."

Now he says here:

"The balance of the items are all savings account books which were acquired at a later date from the house of Mrs. Jeffords."

858 He has them listed there.

Now, he had never been in the house of Mrs. Jeffords at that time that I know of. I don't think he had been, anyhow.

So he was listing things there that were a later date acquired at the house of Mrs. Jeffords, and he says he listed those on the 29th on one piece of paper, and that is a photocopy of it.

Now I say I don't recollect seeing any such paper prepared and how he would get that stuff out of--the items that he says here the balance are "which were acquired at a later date from the house of Mrs. Jeffords;" -- how he could put that on the same sheet, if he made it there at the apartment the morning of the 29th or at noon of the 29th.

I think it speaks for itself.

Q. Subject to your meeting with Mr. Sullivan at your apartment, at a later date you and Mr. Sullivan visited the home of Mrs. Jeffords?

A. Well, I think it was several days later.

Q. And at that time you collected other papers? A. That is right. We were there numbers of times.

Q. And some of the papers on this list were acquired at the house of Mrs. Jeffords. A. I am sure, yes, they were; some of the items in that.

859 There was especially that Des Moines stock bond, because it related to income tax.

MR. LEEMAN: Your Honor, this is one item that I overlooked that I think is very material. It is the bill for the purchase of the wheel chair for Mrs. Jeffords.

MR. LASKEY: Another item which was never exhibited at pre-trial and I haven't seen it before.

THE COURT: All right; show it to Mr. Laskey, and have it marked.

BY MR. LEEMAN:

Q. I will show you two papers there, Mr. Bird, and ask you what they are. A. This is a receipt for a wheel chair which was rented for Mrs. Jeffords by Mrs. McCord, and paid for by her unless she got it out of the petty cash later; I don't know.

Q. Were you ever consulted about the purchase of a wheel chair?

A. Yes.

I vetoed the idea. There was no room in the house for a wheel chair.

Q. Is that the only reason? A. Well, there was no room to run it, and Mrs. Jeffords was getting along all right. Lily Mae used to give her walks. And at that time I think Mrs. Jeffords could sit up in
860 a little rocking chair, the one that I had bought for her.

There was no place to wheel a wheel chair in that house. Upstairs. It could get knocked down the stairway or anything could happen to it.

The front rooms were occupied and Mrs. Jeffords couldn't see out the windows from a wheel chair.

I vetoed the idea.

Q. Do you know whether or not Mrs. Jeffords was removed from her room in this wheel chair? A. She was.

Q. Do you know when that was? A. Well, numerous times during the day.

Q. During what period? A. Well, that would be in the period of November, I think, following the date of that.

This was bought on the 12th month -- December 4, and rented until January the 4th.

It was following the date of this.

Q. And the date of this is December the 4th? A. Yes.

MR. LEEMAN: I will ask to have this marked Defendant's exhibit.

861 THE CLERK: Defendant's Exhibit Number 14.

(The document referred to was marked Defendant's Exhibit 14 for identification.)

MR. LASKEY: No objection.

THE COURT: It will be received.

MR. LEEMAN: I offer this in evidence, your Honor.

THE COURT: It will be received.

(The document referred to, heretofore marked Defendant's Exhibit 14 for identification, was received in evidence.)

MR. LEEMAN: May I read this to the jury?

THE COURT: You may.

MR. LEEMAN: This is the Hospital Ambulance Oxygen and Equipment Company, Inc.

"Ambulance service, invalid service, sickroom supplies, sale, service and rental.

"Showroom 1012-18th Street Northwest, next to 1801 K Street, Northwest.

"Edward G. Council, Manager.

"Phone District 7-6384.

"Date of order: 12th month, fourth day, '59.

"Your order: Mrs. McCord.

862 "Rented until the first month, fourth day, '59.

"Delivery service: from the 12th month, the fourth day, '59.

"To Mrs. Tracy L. Jeffords, 2707 Woodley Road Northwest,
ADams 42261.

"Pickup at office, 588, quantity, 1, wheelchair, Hollywood."

There is a lot of numbers, Your Honor, that apparently have no
significance.

THE COURT: Well, why do you read all that? Don't you just
want to show a receipt for payment of a wheel chair and the dates?
Isn't that all it is for?

MR. LEEMAN: No, your Honor.

THE COURT: We will go on and read it, then. Go ahead; read
it all. Read everything.

MR. LEEMAN: No, I don't want to read it. I thought your Honor
was requiring me to read it.

That is what this is, and this is apparently the receipt for it, and
it is signed by --

THE COURT: How much was it?

MR. LEEMAN: \$15.00.

THE COURT: All right.

BY MR. LEEMAN:

863 Q. Mr. Bird, you testified that these papers that you brought
back from Mrs. McCord's house were placed on the dining room table
in Mrs. Jeffords' house; is that correct? A. That is correct.

Q. And you testified that there were other papers on that table
at the time? A. That is right.

Q. And you testified that some of those papers were in the hand-
writing or done by Mrs. McCord? A. Yes; that was her workshop for

her -- where she was doing her work about the rooming house accounts there.

THE COURT: Did you say "Mrs. McCord"?

MR. LEEMAN: Yes.

THE COURT: Was that Mrs. McCord's workshop?

MR. LEEMAN: Yes; that is where she was keeping records of the rooming house business; on that table and in the buffet.

Those are her records.

THE COURT: I thought maybe you misspoke and you meant Mrs. Jeffords.

You meant Mrs. McCord?

MR. LEEMAN: That is right.

THE COURT: I see.

864

BY MR. LEEMAN:

Q. I only want you to identify those as papers that were there at the time. A. In duplicate. Those were papers, the work she was doing to pay for it, oh, that set of rosewood furniture in the living room.

Q. I will ask you whether or not these and other similar papers are some that you gathered up to take over to your house. A. No; I didn't take them over to the house.

THE COURT: Let him finish his question first.

Go on, Mr. Leeman.

BY MR. LEEMAN:

Q. Were these papers you gathered up and took to your house from the table? A. I didn't take those. They were there among the -- they were there up until after Mrs. Jeffords' death; they were there all the time.

I had a conversation with Mrs. McCord about them when we came back from her house after having been down and we had this talk about the cedar chest, we came back, and says, "Mr. Bird, you are going to have a lot of letters to write".

Those were among them. I didn't know what --

865 Q. But these are not the ones that you took to your house?

A. No, I didn't take them to the house.

MR. LEEMAN: I think that is all, your Honor.

MR. LASKEY: No further questions.

THE COURT: Stand down.

(Witness left the stand)

1 055

JAMES F. BIRD

was called as a witness, and, being previously duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. LEEMAN:

1056 Q. Now, Mr. Bird, in the counterclaim that the executors filed
you claim the 3-stone diamond ring which you do not have and
has not been delivered to you; is that right? A. That is right. That
is one of the things.

Q. What is the value of that 3-stone diamond ring, Mr. Bird?

A. \$750.

Q. The other stone is what -- the garnet? A. The garnet circled with diamonds.

Q. Garnet circled with diamonds? A. Yes.

Q. What is the value of that ring, Mr. Bird? A. \$200.

Q. Now, Mr. Bird, what has been the cost to the executors for the defense of these suits that have been filed?

MR. LASKEY: I object.

MR. LEEMAN: Your Honor, may we approach the bench?

THE COURT: Yes.

* * * * *

743

RAYMOND BARTLEY

was called as a witness, and, being first duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. LEEMAN:

Q. Reverend Bartlett, will you please state your full name?

744

A. Raymond Bartley.

THE COURT: Is it Partley?

THE WITNESS: B-a-r-t-l-e-y.

BY MR. LEEMAN:

Q. Are you the pastor of a church? A. I am.

Q. Where is that church? A. Colesville Methodist Church.

Q. How long have you been the pastor there? A. Over five years.

Q. And prior to that were you pastor of another church? A. I was pastor of Hamline Methodist Church, 16th and Allison Street, Northwest Washington.

Q. Did you know Mrs. Laura L. Jeffords in her lifetime? A. Yes, sir.

Q. State whether or not she was a member of your church?
A. She was.

Q. Do you recall in October of 1959 that Mrs. Jeffords became ill? A. Yes. She attended church on that morning, as I remember, and was taken home before the worship hour. I was told that she had been taken ill at the church.

745 Q. During her illness did you have occasion to visit her at her home? A. Yes.

Q. And would you tell us what her condition was?

MR. LASKEY: Just a minute. I think he ought to fix the date, if the Court please.

THE COURT: Yes.

MR. LEEMAN: I said did he have occasion to visit her during her illness, and he made a number of visits.

The question was intended to cover all of them and what he knew about it.

MR. LASKEY: I think we are entitled to have the exact time in so far as possible, fixed.

THE COURT: Yes. I think so, too, so far as this witness is able to fix the exact time.

BY MR. LEEMAN:

Q. Reverend Bartley, do you recall the date or approximately when you first visited her after she was taken ill? A. I think it was the 11th day, or thereabouts, of October, and I went there that afternoon -- when she was taken ill, and I went there that afternoon.

Q. What was her condition at that time? A. Well, she did not seem to be entirely rational to me. Of course, that is just my judgment. As to she may have had some sort of serious accident, I don't know what
746 kind.

Q. Then when was the next time you visited her? A. That would be hard for me to answer definitely. I can tell you what my custom is usually in cases like that.

MR. LASKEY: I object.

THE COURT: Sustained.

Did you fix the month, Doctor? Can you fix the month when you visited her next?

THE WITNESS: Oh, yes. I visited her the next day, because that is my custom.

BY MR. LEEMAN:

Q. And subsequent to that how frequently did you visit her?

A. Again, it would be a matter of estimate. I would say at least twice a week.

Q. And did that continue until her death? A. Yes.

Q. Now, as you observed it, did her condition get better or worse during that period? A. Well, after the first attack on that Sunday she seemed to rally. I believe it must have been about ten days later that she seemed to have another what I would call a stroke. I am not a doctor, of course. And from that time on it seemed to me there was

747 gradual deterioration.

Q. After that period until the time of her death would you say her mental condition was such that she was able to transact business?

MR. LASKEY: I object to the form of the question, if the Court please. I think he should be asked what her condition was first, before leading him.

THE COURT: Yes.

BY MR. LEEMAN:

Q. From your observations of her, Reverend Bartley, from that time until her death what would be your opinion as to her mental condition and ability to transact business? A. Well, I would say, sir, that there were times when I talked with her when I thought she was fairly rational.

The next visit it would be just the opposite.

It was a sort of an up and down thing, if that may be a sufficient answer to your question. Whether she was able to conduct business during those periods of rationality I would not be able to say. There were times when I felt definitely she could not have.

Q. And during the period about seven days before her death, up until the time of her death, do you know what her condition was then?

A. As far as my observation was concerned I would say very serious.

748 THE COURT: No. He means as to mental capacity, I think -- don't you, Mr. Leeman?

MR. LEEMAN: Yes, your Honor.

THE WITNESS: During the last seven days of her life?

MR. LEEMAN: Yes.

THE WITNESS: I would not think that she could have transacted business.

BY MR. LEEMAN:

Q. Did you know anything about the condition of her eyes? A. No, I wouldn't say; except by observation she seemed to be -- well, I hate to say this, but for as long as I knew her she was rather a senile, I thought, or developing senility.

THE COURT: You say as long as you knew her.

THE WITNESS: Yes.

THE COURT: Will you fix how long he knew her?

How long did you know her?

THE WITNESS: I became her pastor on the first Sunday of June and I suspect I met her very shortly after that.

THE COURT: What year?

THE WITNESS: 1957.

BY MR. LEEMAN:

749 Q. Do you recall whether or not on the Sunday before she died you took some flowers to her home? A. Yes; from the church.

Q. And did you leave the flowers at the house? A. My recollection is that I did. I am not certain.

Q. And did you see her on that occasion? A. I can't say for certain that I did. Ordinarily I would have seen her.

Q. Reverend Bartley, I will show you a paper and ask you if that is your signature? A. Yes, sir.

Q. And what is the date on that paper? A. July the 19th, 1960.

Q. And I will ask you if that is a statement that you gave at that time with relation to your visits to Mrs. Jeffords'. A. Yes.

MR. LEEMAN: I ask that it be marked for identification, your Honor.

MR. LASKEY: If the Court please, this is an incident to which I have not referred before--

THE COURT: Have it marked for identification.

MR. LASKEY: Yes; but I do want to call the Court's attention to the rule of this Court with respect to exhibiting papers to be used in direct examination, at the time of pretrial. This is again an instance
750 where I have not seen this. I have not brought that up before.

THE COURT: I will give you an opportunity to see it.

I would like to get it marked.

THE CLERK: Defendant's Exhibit 12 for identification.

(The document referred to was marked Defendant's Exhibit 12 for identification.)

THE COURT: Now you may look at it.

(Handed to counsel Laskey.)

THE COURT: What are you doing with it?

MR. LEEMAN: I am going to offer it in evidence, your Honor.

MR. LASKEY: I object.

THE COURT: I don't see any basis on which this exhibit is admissible.

If you wish to show it to him to refresh his recollection, if it needs refreshing, that is another matter.

MR. LEEMAN: Your Honor, that is a statement that he made--

MR. LASKEY: If the Court please, I don't think counsel should
751 make a statement.

THE COURT: Come to the bench.

(At the bench:)

THE COURT: What is your basis for it?

MR. LEEMAN: That is a statement that was given him shortly after she died when these facts were fresh in his mind, and he has testified here today and I want to show that the statement that he made

shortly after she died coincides with his recollection three years later. I think that is important.

He is testifying to this today, three years after the death. I want to show that that was what his recollection of that was immediately after she died.

We have a right to show the jury what his position has been.

THE COURT: Do you still object?

MR. LASKEY: I still object.

THE COURT: Sustained.

MR. LEEMAN: May I read some of this to the witness and ask him if it is his recollection at that time?

MR. LASKEY: I object.

THE COURT: Oh, no. If you feel he has forgotten something where his memory needs refreshing you may show it to him and then ask questions; not leading questions but questions designed to bring out those facts.

752 MR. LASKEY: I submit the witness has not exhibited any need for recollection.

THE COURT: I don't know.

You may show it to him and then ask him certain questions.

MR. LASKEY: But not reading from that document.

THE COURT: Oh, no. I said show it to him.

And then ask him whether that refreshes his recollection in any respect.

(Open Court)

BY MR. LEEMAN:

Q. Reverend Bartley, I will ask you to look at the next to the last paragraph of that statement and ask you if that refreshes your recollection. A. Is this the Sunday that you were talking about a while ago? My last visit to her, if that is the question you are asking me --

MR. LASKEY: Are you testifying from your recollection now or from reading that paper, Reverend?

THE WITNESS: My last visit to Mrs. Jeffords; when I went into

her room, I did not associate it with the taking of the flowers that was asked before.

My last visit to her she was in a coma; she could not talk to me.

753- MR. LASKEY: Thank you.

754 THE COURT: And what was that last visit? Do you remember the date, Doctor?

THE WITNESS: No, I don't remember the date. It has been four years ago, your Honor.

THE COURT: All right.

BY MR. LEEMAN:

Q. Would that refresh your recollection by looking at it? A. Yes.

MR. LASKEY: I think the witness has already stated he has already looked at the paper and he doesn't remember the date. I think that is the extent to which we can go.

THE COURT: Let him look at it and see if it refreshes his recollection as of the date of the condition he referred to.

THE WITNESS: As I recall, sir, she died about --

THE COURT: Doctor, don't think out loud. Just answer the question.

THE WITNESS: Thank you, your Honor; I am sorry.

December the 20th, 1959 is the date that you are asking about.

755 THE COURT: No; the question was when you last saw her.

THE WITNESS: I last saw her, I think, on Sunday before she died on Christmas Day. Now, whenever that date was I don't know, whether it was the 20th or --

MR. LASKEY: The calendar would show that was the 20th, if the Court please.

THE COURT: All right.

(Calendar handed to witness.)

THE WITNESS: I think that is the correct date, sir.

THE COURT: What is that, now?

THE WITNESS: The 20th of December.

THE COURT: I see.

THE WITNESS: 1959.

BY MR. LEEMAN:

Q. You saw her on that date? A. Yes; that was Sunday, as I recall it.

Q. And what was her condition then?

MR. LASKEY: He has already said she was in a coma. I object to repetition.

MR. LEEMAN: All right; if you are satisfied, I am.

BY MR. LEEMAN:

Q. Reverend Bartley, how long have you known Mrs. Jeffords?

A. I became the pastor of the church on the first Sunday of June, 1957,
756 and I think I must have met Mrs. Jeffords very shortly thereafter,
at least noticed her, because she was the type of person you would notice.

Q. Do you recall whether or not her attendance at church was regular? A. Very regular I would say.

Q. You say here frequently during this time? A. Yes.

MR. LEEMAN: Your witness.

MR. LASKEY: May I have the chart that you had marked, I think as Number 4, Mr. Leeman?

MR. LEEMAN: I believe the Clerk has it.

(Handed by Clerk.)

MR. LEEMAN: While he is looking at that chart, if the Court please, there is one further question I think I should ask him.

THE COURT: You may ask him.

BY MR. LEEMAN:

Q. At any time when you visited her during her illness did she discuss with you the giving away of any of her property? A. To my knowledge, no.

757

CROSS EXAMINATION

BY MR. LASKEY:

Q. Now, Reverend Bartley, as I understand it, you have no knowledge of Mrs. Jeffords' condition on the 19th, the day before you visited her when she was in a coma? A. No, except by hearsay, sir.

Q. I was just asking you for what you yourself know.

During the occasions of some of your visits you found her rational?

A. Seemed to be.

Q. And you were not able to state under oath that at any particular time when you did not see her that she was not competent to transact business or to know what she was doing, although her physical condition might have been weak? A. I think I could not say that I knew that.

MR. LASKEY: That is all I have.

THE COURT: Any redirect?

MR. LEEMAN: That is all.

* * * * *

903

EMMA SOBEL

was called as a witness, and being first duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. LEEMAN:

Q. Will you state your full name for the Court? A. Emma Sobel.

THE COURT: Emma what?

THE WITNESS: Sobel. S-o-b-e-l; E-m-m-a.

BY MR. LEEMAN:

Q. Where do you live? A. 304 Aspen Street, Northwest.

Q. Where are you employed?

THE COURT: Sit back in your chair, Mrs. Sobel. Nothing to be alarmed about.

THE WITNESS: American Security and Trust Company.

BY MR. LEEMAN:

904 Q. And what is your position there? A. Chief Clerk and notary public.

Q. At what branch? A. 2300 Calvert Street.

Q. Did you know Mrs. Laura L. Jeffords in her lifetime? A. I did.

Q. And did you have any business relations or associations with her during her lifetime? A. Business relations, yes.

Q. And during what period was that? A. From about 1953 until her death.

Q. Did there come a time when you went to Mrs. Jeffords' home to transact some business? A. I did.

Q. Do you remember when that was. A. Yes. It was in October; I think it was October the 19th of 1959.

Q. And what was the business that was transacted? A. Well, I was sent there by the bank to notarize some documents giving power of attorney for her bank business to Mr. James Bird.

Q. And what was Mrs. Jeffords' condition at that time?

MR. LASKEY: Physical or mental?

905 MR. LEEMAN: Both.

THE COURT: Well, let's get one at a time.

THE WITNESS: Well, physically she of course was in bed but she was very alert, and I would say mentally she was 100 per cent of alert and knew exactly everything.

BY MR. LEEMAN:

Q. How long was you there on that date? A. Oh, the whole thing took approximately, I would say probably an hour.

Q. How was the paper executed? A. Well, the doctor was there and Mr. Bird was there, the nurse was there, and it was in her bedroom, and --

THE COURT: The question is how it was executed; not who was there.

THE WITNESS: Oh, well, it was by her mark because she didn't write well and her eyesight was not too good. It was read to her, she fully understood everything, and I of course placed my notary seal under it, after she made her mark, along with two witnesses.

BY MR. LEEMAN:

Q. Her name was signed; she placed her mark on it? A. That is right.

Q. In the presence of two witnesses? A. That is right.

906 Q. Now, on any previous occasions did you have occasion to assist her either in writing or handwriting of her bonds or securities? A. Well, on a number of occasions I have made out her deposit tickets for her, or withdrawals, and when she was in the bank in person she signed the name; I put in the figures and did what I could for her and then she would sign the name.

Q. Will you state whether or not she had difficulty seeing the line on which she signed? A. Well, yes; she did. She used a magnifying glass but I would put my finger on the line and once she started to write, why, she had no difficulty whatever writing her name once she got started.

Q. How long had her eyes been bad to that extent? A. Well, her eyes had been failing for the past two years, I would say. They had gotten progressively worse.

Q. Did she transact business with you at the bank frequently or infrequently? A. Well, in our particular branch it was infrequently; if you would say probably once every two weeks; and most of her business was at our main office at 15th and Pennsylvania Avenue.

907 Q. At the time that this power of attorney was executed was there any discussion by Mrs. Jeffords with reference to the expense of her burial? A. Yes. Well, it wasn't a discussion. She told Mr. Bird that she wanted to be sure that he had money available to take her body to, I believe Ohio. Because I explained to Mrs. Jeffords that if anything happened to her, why, the power of attorney would cease at her death. So she immediately told me that she wanted Mr. Bird to have money so that he could take her body to Ohio for burial, and which we decided right then that he should get money so that he would have it available in case of her death.

Q. And was that arrangement made? A. That was arranged; yes.

Q. And do you remember the amount? A. Well, he came down the next day and opened an account in his name and we transferred, I believe it was a thousand dollars.

Q. Did you receive a letter from anyone at the bank with reference to a power of attorney for Mrs. Jeffords. A. Well, we have a -- we had -- not reference, not in reference to a power of attorney. Our manager wrote a letter in reference to a power of attorney suggesting that Mrs. Jeffords, since her eyesight was failing, that she give someone a power
908 of attorney and that is how this power of attorney came about then.

She said that she would. She suggested it, so that is how that came about that we -- she would have someone else write a letter for her; I don't know who; and she would sign and send the letter down to the bank by messenger or whoever would come in, and we would make the transfer, and those letters of course were kept on file. And then her signature got rather poor, so our manager decided that she should have a power of attorney and he did write her a letter and ask her to consider it.

Q. Do you know whether or not there had ever been any previous arrangement by Mrs. Jeffords for her burial and funeral expenses?

A. Not to my knowledge; there was no previous arrangement. She indicated to me that Mr. Bird was the only one that was to have possession of her body and burial. She made that very clear to me.

MR. LEEMAN: Thank you. That is all.

CROSS EXAMINATION

BY MR. LASKEY:

Q. Mrs. Sobel, the manager to whom you have referred, can you identify him by name? A. Yes. Mr. Claude Miller.

909 Q. And he is the manager at the Woodley Park Branch? A. That is right.

Q. Do you know whether or not anyone suggested to Mr. Miller that he should write such a letter? A. Oh, no; there wouldn't have been any suggestion. That would have been -- that is his duty to decide.

Q. Now this magnifying glass to which you referred, wasn't it

Mrs. Jeffords' custom to wear a magnifying glass about her neck on a chain? A. Quite often. I think it was on a little ribbon or chain.

Q. Ribbon or chain? A. And when she would make something out, she would look at it after we made it out to make sure it was all right.

Q. On the occasion of October 19, when you went there for the execution of the power of attorney, although from your testimony I understand it was evident to you that Mrs. Jeffords had had possibly a stroke and had some difficulty in managing her arm -- A. That is right.

Q. Other than that, her eyesight was bad but that had been so
910 for some time, and other than the paralysis there was no mental change, no change in her mental condition. She seemed alert? A. She did. She recognized me, called me by name, talked to me very rationally, and I told her I expected to see her in the bank soon, and she was just the same as always.

* * * * *

933

CLARA ESTELLE BENNETT

was called as a witness, and, being first duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. LEEMAN:

934 Q. Miss Bennett, would you state your full name? A. My full name is Clara Estelle Bennett.

Q. Is it "Miss" Bennett? A. Yes, it is.

Q. And where do you live, Miss Bennett? A. The address? I live here in the city. You want my address?

Q. Address, yes. A. 2122 Massachusetts Avenue, Northwest.

Q. Are you employed anywhere now, Miss Bennett? A. No. I am a retired librarian.

Q. Where did you work as a librarian? A. In the public library in the city.

Q. I see. District of Columbia library? A. Yes, it is.

Q. And did you know Mrs. Laura L. Jeffords in her lifetime?

A. Yes, I did. I met her years ago. I had a room in her -- rented a room in her home.

Q. Where was that? A. On Woodley Road. 2707 Woodley Road.

Q. Do you know what year that was that you went to live with her uncle? A. Yes; it was in the fall of 1934.

935 Q. How long did you live there at that time? A. For six years. Just about six years.

Q. And then where did you move from there? A. I moved to an apartment in Georgetown.

Q. And how long did you stay there? A. 15 years.

Q. Until what year, approximately? A. 1955.

Q. Now, during that period, approximately 1940 to 1955, did you have occasion to see Mrs. Jeffords? A. Occasionally. Not very often.

Q. Where did you go to in 1955? A. I moved up to Canada with a relative of mine.

Q. And how long did you stay up there? A. Four years. Came back in 1959.

Q. What part of 1959 was that that you came back? A. It was early in October.

Q. Early in October of 1959? A. Yes.

Q. Did you see Mrs. Jeffords at or about that time? A. Yes. I rented a room from Mrs. Jeffords from Monday until Saturday, not quite a week, waiting for my apartment, the one I rent at present.

936 Q. What would be the date of that Saturday, Did you leave on that Saturday? A. Yes, I did. It was the tenth of October.

Q. What was Mrs. Jeffords' condition on that date when you left? A. Well, she seemed perfectly all right.

Q. And did there come a time when you found that she was ill? A. I believe she was ill the day, the following day after I left. That would be Sunday, the 11th of October.

Q. Now, Miss Bennett, did you have occasion to observe any of the jewelry that Miss Jeffords had during this week in 1959 that you were at her house? A. Yes. Just the jewelry that she wore. I believe it was a three-diamond ring I remember, and then she had a garnet ring that she wore quite a lot, but I don't remember--and she wore a solitaire diamond ring also. I am sure I saw those three rings on her that week.

Q. You saw those rings on her fingers? A. Yes.

Q. During that--that was the week previous to October 10?

A. Yes.

937 Q. Can you describe that garnet ring? A. Well, it was a -- let me see - a flat stone with a circle of diamonds.

Q. Could you indicate the size of the flat stone and the diamonds.

MR. LASKEY: Which one are you talking about now?

MR. LEEMAN: The flat garnet ring, she said.

MR. LASKEY: Thank you.

THE WITNESS: Well, I should say about the size of a dime. I am rather hazy about the size.

THE COURT: About the size of a dime did you say?

THE WITNESS: Yes. As I remember, it was about the size of a dime.

BY MR. LEEMAN:

Q. From your association with Mrs. Jeffords what would you say as to her ability to understand business and transact her affairs?

MR. LASKEY: When?

THE COURT: At that time?

BY MR. LEEMAN:

Q. During this week in October, prior to the day that she was taken ill. A. Well, as far as I remember, she was perfectly all right. Her mind seemed very clear and she looked after everything as usual.

938 Q. Did you know anything about her eyes? A. Yes, I did, before that time; but it was within, I should say two or three years before that that I first learned about her eyes.

Q. And what did you learn about her eyes? A. Well, I just learned that she was going blind, couldn't see very well.

Q. During this week prior to October the 10th, 1959, did she have difficulty seeing at that time? A. Oh, yes; she did, great difficulty. She had a magnifying glass that she kept and wore on a chain around her neck, that she used, and I believe she could see just a little bit with that. And of course she could see to get around the house, but she couldn't see in order to read or write.

Q. Did you ever do any work for Mrs. Jeffords at any time?

A. Yes. I offered my assistance --

MR. LASKEY: May I know what period we are talking about now?

BY MR. LEEMAN:

Q. When was this? A. Well, I rented a room from her two or three times within a few years previous to that, and each time that I
939 was there I wrote personal letters for her, and I copied information at one time, information for her income tax.

Q. Was that during this last week in '59 when you lived there?

A. I don't think I-- I wrote some letters for her at that time but I think that was all. I don't remember doing any other type of work.

Q. Was you ever paid anything by Mrs. Jeffords for your work?

A. No. Oh, no. Oh, no. I offered my assistance.

MR. LEEMAN: That is all.

CROSS EXAMINATION

BY MR. LASKEY:

Q. When you returned from Canada and went to Mrs. Jeffords, she recognized you, didn't she? A. I thought she did. It might have been my voice, but I think she did see a little, just a little.

Q. She was getting around, around the house and around and about? A. Around the house, yes.

Q. In fact, she would go out from time to time, would she not?

940 A. Yes, she did.

MR. LASKEY: May we have the rings, please?

(Produced and handed to Mr. Laskey by Mr. Bird.)

BY MR. LASKEY:

Q. I will ask you if you would, please, to examine these rings and see if you recognize any of them as the rings about which you have been testifying.

And when you speak to me, even though I am standing here, the ladies and gentlemen at the far end want to hear, so try and keep your voice up. A. That small one there --

THE COURT: I can't hear you.

MR. LASKEY: No one can hear you.

THE WITNESS: The garnet ring is a little smaller but it looks like the same ring.

BY MR. LASKEY:

Q. And that is the same garnet ring that you saw during the week of October, ending October 10? A. It looks like it.

And that solitaire diamond also looks like the one she was wearing.

I don't remember seeing the two-diamond ring. She had one with
941 three diamonds.

Q. She had one with three diamonds? A. Yes.

Q. Now, are you sure that you saw that 3-diamond ring on this one week during October, or might that have been associated in your mind with your prior visits there? A. I am sure that I saw it on her in that week.

MR. LASKEY: Thank you.

May we have these four rings which Mr. Bird produced from his pocket all one exhibit, if the Court please?

THE CLERK: Plaintiff's Exhibit Number 13.

MR. LASKEY: I ask, in the light of the testimony, that this ring which has a red stone with a white stone around it, be marked with a sub exhibit number.

THE CLERK: 13-A.

MR. LASKEY: Yes, please.

(The items referred to were marked Plaintiff's Exhibits 13 and 13-A for identification.)

BY MR. LASKEY:

Q. Showing you now again the ring which now bears the tag "13-A" for identification, and that is the ring you referred to as the garnet ring and it is the same ring that you saw during the week ending October 10? A. It is.

942 Q. No one heard you but me. Would you say it again, please.

A. Yes; that is correct.

Q. Do you recognize this ring which came from what exhibit number, Mr. Clerk?

THE CLERK: No. 6.

THE WITNESS: It could be the -- this could be the ring but I rather thought the diamonds were larger.

Q. Other than it could be the ring that you remember? A. Yes; the same style. But I am afraid I am a little bit hazy about the size of the diamonds but I thought they were a little larger than that.

MR. LASKEY: Thank you.

I offer 13 and 13-A in evidence.

THE COURT: There being no objection, they will be received.

(The items heretofore marked Plaintiff's Exhibits 13 and 13-A for identification were received in evidence.)

THE COURT: And the 3-stone ring is already in evidence?

943 MR. LASKEY: Yes, Your Honor.

That is all I have of this witness.

THE COURT: I will take a five minute recess.

(Short recess.)

THE COURT: You may proceed.

MR. LEEMAN: Are you through with your cross examination?

MR. LASKEY: Yes.

REDIRECT EXAMINATION

BY MR. LEEMAN:

Q. Miss Bennett, are you able to tell what kind of a stone that is in the center of that ring?

THE COURT: Exhibit what, Mr. Leeman?

MR. LASKEY: What ring?

MR. LEEMAN: Plaintiff's Exhibit 13-A.

THE WITNESS: It could be either a ruby or a garnet. But I thought or always understood it was a garnet ring.

THE COURT: Always understood what, Madam?

THE WITNESS: That this was a garnet ring.

THE COURT: You see, the jury is craning their necks to hear you and you are speaking low because you are speaking to Mr. Leeman. You must remember to speak loud enough for the jury to hear you.

944 THE WITNESS: All right, your Honor.

BY MR. LEEMAN:

Q. Would you know whether that is a garnet stone or a ruby, or imitation ruby, Miss Bennett? A. I am afraid I wouldn't know definitely. I am not experienced enough.

Q. Your testimony is that that appears to be a ring that she was wearing. A. Yes, it does. Yes.

Q. You are in no position to know whether or not that actually was the ring?

MR. LASKEY: I object to the form of the question.

THE WITNESS: No, I am not.

THE COURT: I sustain the objection. She is your witness and you are cross-examining her.

Now, Madam, you must not continue.

MR. LASKEY: There is no question pending.

THE COURT: I don't know what she is saying there in some conversation with Mr. Bird.

You must not speak until a question is asked you and then you are called upon to answer.

THE WITNESS: All right, your Honor.

945 BY MR. LEEMAN:

Q. Miss Bennett, did you visit Mrs. Jeffords during her illness?

A. Yes, I did. I went over a day or two after she became ill and she was downstairs at that time.

Q. Do you know what date that was? A. No. I am not sure whether it was Monday or Tuesday following the Sunday that she became ill. It was either a Monday or Tuesday. I am not sure which day. And she was downstairs. I went over a little later; I don't remember the date; and she was upstairs in bed. And when I called up later to find out if I could see Mrs. Jeffords, they told me that she was not seeing anyone, so I did not see her again.

Q. Do you remember when you made that telephone call? A. No, I am sorry; I do not remember the day or the date.

Q. How long was it after she was taken ill? A. It might have been two weeks, about two weeks I would say.

Q. And after that time did you see her any more? A. No; I did not see her any more. I called up to see how -- to find out how she was several times, but was told that she was not seeing any of her friends.

946 Q. Do you know who was talking to you on the telephone. Did you recognize the voice of the person talking with you? A. No, I do not remember, who I talked to.

Q. During your acquaintance with Mrs. Jeffords did you ever meet Mrs. McCord? A. Yes. I remember meeting her, I believe the last time I was there. She came over one morning to take Mrs. Jeffords out in her car.

Q. Had you ever met her before? A. I might have earlier, but I didn't remember meeting her. I was working and away most of the time and I didn't remember meeting Mrs. McCord until the last, I believe it was the last time I was there.

MR. LEEMAN: That is all.

MR. LASKEY: Nothing further, your Honor.

* * * * *

949

ROBERT M. GRAY

was called as a witness, and, being first duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. LEEMAN:

Q. State your full name, Mr. Gray. A. Robert M. Gray.

Q. Where do you live, Mr. Gray? A. 4403 Klinge Street,
Northwest, Washington, D. C.

Q. What is your business? A. My profession is that of attorney.

Q. And you are a member of the Bar of the District Court of the
United States for the District of Columbia? A. I am.

Q. Are you a counsel for any of the parties in this case? A. I
am attorney for Mrs. McCord and Mr. McCord.

950 Q. When did you meet Mrs. McCord for the first time, Mr.
Gray? A. It was in January, 1960.

Q. Do you know the date? A. I think it was the 26th of January.

Q. Are you positive of that day? A. I said I think it was the
26th of January.

Q. Well, how do you fix that, Mr. Gray? A. I have an entry in
my work sheet.

Q. And where did you first meet her? A. In my office.

Q. How did she happen to be in your office? A. Either she
called or her husband called, or the person who sent her or referred
her to me called and made an appointment.

Q. Well, could you tell us who the person that might have re-
ferred her to you would be? A. Yes.

Q. And who would that be? A. It is a young lawyer named Frank
Jones, who is a nephew of the Chief Judge of the Court of Claims.

Q. When did you first meet Mr. McCord? A. I think it was on
951 the 26th of January 1960.

Q. Did Mr. and Mrs. McCord come to your office together on
that date? A. I think.

Q. Mr. Gray, on that date can you tell us whether or not Mrs.
McCord was able to tell you the names of the securities that she
claimed were in the cedar chest? A. Repeat the question, please.

(Question read.)

THE WITNESS: I don't think on that date we discussed securities in the cedar chest, and I don't think if we had discussed it she could have told me.

Q. Was Mr. McCord there at that time? A. I think he was.

Q. Well, on that occasion did you discuss the Jeffords estate case? A. Well, there wasn't any case then as far as I knew, but we did discuss the subject of her meeting with Mr. Sullivan and Mr. Bird, and Mr. Keith, I think the day previous. She was very much upset because she had been accused of stealing or secreting a ring that belonged to Mrs. Jeffords. That was the reason she came to see me.

Q. Now, you say she was accused of secreting. Who was it that
952 accused her? A. Mr. Bird.

Q. That is the information that you obtained from Mrs. McCord on that day? A. Yes.

Q. And you think now that might have been the 25th of December?
A. No.

Q. What date did you say that you thought it was? A. I think it was the 26th of January.

Q. Now, Mr. Gray, when did you first discuss with Mrs. McCord the securities that she has claimed here were in the cedar chest?
A. I think it was sometime later.

Q. Can you fix the time? A. No, I don't think I can. I had several conversations with Mrs. McCord and Mr. McCord, and I don't think I can say with any degree of certainty when the matter of the securities was first brought to my attention.

Q. But you did have some discussions with Mr. McCord about these claimed securities? A. Yes.

Q. Did you have any discussion with Mr. Sullivan about these
953 securities? A. I did.

Q. When was the first time you had a discussion with Mr. Sullivan? A. About the securities?

Q. Yes. When did you first contact him about this McCord -- I mean Mrs. Jeffords' estate? A. Well, the first time I talked to Mr. Sullivan I think was the day Mr. and Mrs. McCord first came in, and I think I called him on the phone while they were in the office. I told Mr. and Mrs. McCord that I knew Mr. Sullivan and had known him for some time.

Q. At that time much of the discussion was about jewelry?

A. As I recall, our discussion was about the ring and the charges that had been made against Mrs. McCord about a ring. That she knew nothing about.

Q. Now, Mr. Gray, when did you first learn about the two United States bonds that Mrs. McCord had? A. I don't remember.

THE COURT: You mean the two \$5,000 face value coupon bonds?

MR. LEEMAN: That is right, your Honor.

THE COURT: All right.

954 Your answer is you don't remember?

THE WITNESS: I don't remember.

BY MR. LEEMAN:

Q. Well, tell us when you do remember hearing about them.

A. Well, Mrs. McCord told me about them on the occasion of a visit to my office, but I can not place the time.

Q. Do you know any time when definitely you knew about these two \$5,000 bonds? A. Well, I certainly knew about them on the day of Mrs. McCord's deposition, that date that is on the deposition which is here in the court.

THE COURT: What is that date?

MR. LASKEY: That date --

THE COURT: Can you stipulate, gentlemen?

MR. LASKEY: That date is shown on my copy and the court copy as July 7, 1960. I will so stipulate.

MR. LEEMAN: That is correct, your Honor.

THE COURT: July 7, 1960.

BY MR. LEEMAN:

Q. So that you definitely knew about it on July the 7th? A. Yes, sir.

955 Q. Now, do you remember what -- well, when did you start to work on the complaint filed in this case? A. I don't know for certain. I think it was filed in June of 1960. I didn't start on that until after the executors were appointed and qualified. It was some time between March and June.

Q. You know when the executors qualified, don't you? A. I am told it was in March of 1960.

Q. Now, before you filed your complaint, will you state whether or not you examined the appraisement that was filed in the Jeffords case? A. I think I did. I am not certain at the moment.

Q. When did you first learn the securities that are now claimed by Mrs. McCord that were in that chest? A. I first learned of that when I received a letter from Mr. Sullivan enclosing a photocopy of a list, which he sent to me because the Court directed him to do so.

THE COURT: Now, that is this Exhibit 6-B?

THE WITNESS: I think that is Exhibit 6-B. I don't remember the number.

MR. LASKEY: It is, your Honor.

MR. LEEMAN: Does that exhibit show what date it was made on?

956 THE COURT: Show it to him.

MR. LASKEY: It does not.

MR. LEEMAN: There is no date on it?

MR. LASKEY: No.

BY MR. LEEMAN:

Q. Do you recall when you received that? A. No, I don't. I think I received it with the letter and it would be a day or so following the date of the letter which I think is Exhibit 6-A.

Q. The letter is dated January 9, 1961. Is that the date that you received this?

THE COURT: Exhibit 6-B are you talking about, for the record?

MR. LEEMAN: 6-B, your Honor.

THE WITNESS: I think that is approximately the date. I would assume I would have received it the day following the date of the letter.

BY MR. LEEMAN:

Q. So that you did not discuss any securities or any bonds in the possession of Mrs. McCord on the occasion when they first visited you together? A. I don't think I did. I may have, but I don't recall that we did.

957 She was principally concerned with these charges made against her.

Q. Do you recall when you were first instructed to prepare a suit against the executors? A. No. I don't think I was instructed. I think I recommended to Mrs. McCord that she file a suit against the executors and Mr. Bird individually.

Q. So this suit was filed on your advice? A. Yes.

Q. And was that after you had had an opportunity to examine the inventory in the Register of Wills' office. A. I think so.

Q. So that when you prepared this complaint these securities that are claimed in this complaint as being in the cedar chest were not given to you by Mrs. McCord? A. Would you read that back, please?

(Question read.)

MR. LASKEY: Might I inquire of counsel whether he means whether they were physically given to her?

I don't understand the question.

THE COURT: I think the question is clear.

MR. LASKEY: All right, your Honor, no objection.

958 THE COURT: If Mr. Gray needs some amplification he will certainly say so?

THE WITNESS: Well, Mrs. McCord never gave me physically any securities. We discussed the matter of the identity of the securities that were in the chest.

BY MR. LEEMAN:

Q. When was that? A. Prior to the filing of the suit.

Q. Now, when you filed this complaint did you list any securities in that complaint? A. You know I didn't.

Q. But the jury didn't until just now when you answered.

THE COURT: What did you say?

(Record read.)

BY MR. LEEMAN:

Q. So after this complaint was filed, then you filed motions and took other proceedings to require the executors to furnish you with information as to those securities? A. I did.

Q. At that time did you know about these two \$5,000 government bonds with the coupons attached that Mrs. McCord had?

MR. LASKEY: At what time, if the Court please?

MR. LEEMAN: At the time that he filed his motions to obtain the names of these securities that were supposed to have been in the
959 cedar chest.

THE WITNESS: Well, what time?

The record will show when motions were filed. If you will give me a date I can answer the question intelligently.

BY MR. LEEMAN:

Q. Well, you answered that you did file motions and they were filed shortly after the suit was filed? A. I didn't say they were filed shortly after the suit was filed.

Q. Well, do you know when they were filed? A. No. The record is here and will show.

Q. Well, when did you definitely find out about these two United States government bonds that Mrs. McCord had? A. I can not say for certain. I knew that sometime--the only certain date I have is the date of her deposition. I knew it then and I knew it before then but I cannot give you a definite date before that.

I knew it at the time of the dep--before the deposition because

we had discussed it and I advised Mrs. McCord that very likely she would be asked questions on her deposition about gifts and other relations or transactions with Mrs. Jeffords, and that she was to answer
 960 fully and truthfully and she did.

Q. When did she tell you about the eleven \$100 bills that she found in the cedar chest? A. I do not know the exact date.

Q. When did she tell you about having the sunburst pin? A. I don't remember the exact date.

Q. Now, your deposition was taken first on April the 12th, 1961?
 A. I don't remember.

MR. LASKEY: That is the date that is shown on the record. I will so stipulate.

THE COURT: Very well.

BY MR. LEEMAN:

Q. And at that time in your deposition you testified that you did not know when you first learned of these bonds and the \$1100 that was supposed to have been in the cedar chest; is that right? A. I don't remember. If you would show me where in the deposition that it is reported I will be glad to look at it.

MR. LEEMAN; I will try to do that.

Will your Honor indulge me a moment?

961 MR. LASKEY: Page 4, at the bottom, has to do with the bonds.

MR. LEEMAN: I am reading now from page 10:

"Question: On June the 6th, 1960, when you filed the suit, had you seen the two \$5,000 bonds which are now in the Registry of the Court?

"Answer: I do not remember."

BY MR. LEEMAN:

Q. Do you recall giving that answer? A. I don't specifically recall giving it but if you said it was true--

Q. And the next question:

"Question: Had you seen the cash money?

"Answer: I do not remember."

Would that have been your answer? A. If it is so reported, it was, and it was true.

Q. "Question: Had you seen the diamond pin, the sunburst diamond pin?"

"Answer: I do not recall."

Was that your answer? A. If it is so reported, it was.

Q. "Question: There came a time that you did learn about these articles. Did you subsequently and prior to placing them in the registry of the Court see them?"

962 And the answer is, "Yes."

Is that correct? A. I assume so, yes.

Q. "When was that, and where?"

And the answer is "I do not know when. I know that I personally in your company went to the Clerk's office and deposited them in the registry of the Court."

"Question: Prior to that, when had been the first time you had seen them, the same day?"

"Answer: I do not remember."

"Question: Where did you gain possession of them, in your office or did you go somewhere to get them?"

"Answer: In my office."

Are those the answers you gave? A. I think so.

"Question: Who brought them to you, how did they get there?"

"Answer: Mrs. McCord."

And then the further answer:

"I think she came alone."

Would that be correct? A. I think so.

963 Q. The next question was:

"According to Mrs. McCord's deposition, those articles or the bonds and the cash were in a safe deposit box in the bank in which your office is located. Do you know whether or not she had just taken

them out of the safe deposit box?"

And your answer is: "Answer: No."

And the next question is:

"Question: Did she tell you?"

And the answer: "Answer: I object to that and decline to answer on the ground that it involves a confidential communication."

MR. LASKEY: If the Court please, I see no justification for the protraction of this method of examination.

THE COURT: I agree with you.

This is not a correct method of examining him.

If he makes some statement which in your judgment is contrary to something he said on a previous occasion, you may impeach him.

That is not what you are doing now.

Well, we will recess for lunch until 1:45.

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MR. LEEMAN: Can we approach the bench?

THE COURT: All right.

(At the bench:)

MR. LEEMAN: I have all the law here on it, Your Honor.

THE COURT: Do you have Barron and Holtzoff?

MR. LEEMAN: No. This is Wigmore.

THE COURT: Wigmore died before these rules were made.

MR. LEEMAN: But this takes it out of that rule.

THE COURT: Well, there wasn't any rule. Wigmore was dead before these rules were made.

MR. LEEMAN: I know, Your Honor.

THE COURT: All right. I will hear you.

If he was not dead, I am sure he never wrote any treatise on the rules.

MR. LEEMAN: You read the rule, too, and this is the way you said it.

THE COURT: Go back in open court. The jury will step out.

(The jury left the court room.)

965 (Open Court)

(Witness Gray left the court room.)

MR. LEEMAN: I am reading Wigmore on Evidence, Third Edition, Volume 3, Section 774:

"Witness, Hostile, Biased or Unwilling:

"A similar situation arises where the witness, though called by the party examining, is in fact biased against his cause and is thus indisposed to favor by accepting suggestions of desired testimony."

Now, in this case Your Honor will recall that Mr. Gray testified that filing the suit was his idea.

Now, if somebody filed a suit against you, you would think he was hostile to you, wouldn't you?

THE COURT: I wouldn't think he was friendly but I would have to consider "hostile" in the context of the rule.

MR. LEEMAN: So I think that is why I said that, even in the context of that rule, that the witness has testified something which shows that he is a hostile witness.

THE COURT: Are you through?

MR. LEEMAN: Yes. That is about all I have to say on it, Your Honor.

THE COURT: Do you have anything?

MR. LASKEY: I have nothing to offer except the rule.

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THE COURT: Then you have nothing?

MR. LASKEY: That is correct.

THE COURT: That is very helpful.

Well, I will consider Mr. Gray in the same category as a party and construe the rule that way.

There is some little support for that in Barron and Holtzoff, on that rule at page 236 and 237.

And also in the case in the Fifth Circuit, Rosanna against Blue Plate Foods, Inc., in 314 Fed. Reporter 2d. 174.

I might say, gentlemen, and Mr. Laskey in particular, I thought it was the function of a lawyer to assist the court when questions of law arise, and I hope that in the future conduct of this case there will be some effort to assist the court.

MR. LASKEY: There will be, Your Honor; under the circumstances under which these arose, there was no opportunity. They offered the examination as a hostile witness. I know of no authority which either they have found or the Court found that puts him in that category. I concede that Your Honor can treat him as a party under the rule.

THE COURT: Very well.

MR. LEEMAN: Will Your Honor announce that situation to the jury?

967

THE COURT: I am going to permit you to interrogate the witness under the rule, in the same manner as though the witness was a party,

because he stands in the shoes of a party, is the representative of a party.

Is that what you mean?

MR. LEEMAN: Well, no; it was made plain in front of the jury when Mr. Bird was on the stand, that he was a hostile witness.

THE COURT: No, it was not. It was not. He was called under the next sentence of that rule, Mr. Leeman. Not under the first sentence at all.

I simply said that he would be permitted to testify under the second sentence of Rule 43(b), which reads, in part:

"A party may call an adverse party", et cetera, "and interrogate him by leading questions and contradict and impeach him in all respects as if he had been called by an adverse party."

Now, that is what I did with Mr. Bird.

I never ruled that Mr. Bird was hostile.

MR. LEEMAN: No; what happened was that I think Mr. Laskey said that "We are calling Mr. Bird as a hostile witness." That is what I referred to.

MR. LASKEY: I said as an adverse party.

968 THE COURT: Well, that is as far as I will go.

I will tell the jury that you are permitted to examine Mr. Gray under this rule as a party.

MR. LEEMAN: Perfectly satisfactory, Your Honor.

THE COURT: All right.

Bring the jury in.

(Whereupon, the members of the jury entered the court room and resumed their seats in the jury box.)

Thereupon,

ROBERT M. GRAY

resumed the stand, and, having been previously duly sworn, was examined, and testified further as follows:

THE COURT: Members of the jury, you may recall that I asked counsel to look up a question of law during the luncheon recess, and I

now rule as a result of my hearing counsel and my own research, that Mr. Gray, being an attorney for the McCords, may be interrogated under what is known as Rule 43(b), more particularly that part which reads as follows:

969 "A party may call an adverse party, or an officer, director, or managing agent of a public or private corporation or a partnership or association, which is an adverse party, and interrogate him by leading questions and contradict and impeach him in all respects as if he had been called by the adverse party."

I make that ruling because Mr. Gray represents the McCords and is their attorney and stands practically in their shoes. Now proceed with the case.

DIRECT EXAMINATION -- resumed

BY MR. LEEMAN:

Q. Mr. Gray, was there a time when you had an office with Mr. Charles B. Sullivan? A. In the late 40's, or let's put it this way: when I came back from military service I resumed the practice of law and I rented an office in a suite in the Bowen Building. I rented it from the lawyer who had rented the whole suite.

Sometime later, I think in the later 40's, Mr. Sullivan, who rented from the person from whom I rented, desk space in the same suite, he had a desk in the reception room.

Q. So that he had an office in the same suite with you? A. He had an office in the same suite in which I had my office.

Q. And how long were you together in that suite? A. I don't remember exactly. I think I left in 1951. But I don't remember when Mr. Sullivan left. He may have been there when I left but I do not remember.

970 Q. During that time that you occupied the same suite did you have cases together in which you were co-counsel? A. Not that I recall.

Q. Did you refer any business to him? A. None that I recall. We were all operating independently. There were several lawyers

in the suite; it was not a partnership or any other kind of mutual arrangement other than sharing the office space.

Q. Well, since that time have you and Mr. Sullivan had any cases together? A. Yes.

Q. Have you any idea how many? A. I think two.

Q. Is one of those cases pending now? A. I don't think so.

Q. Well, you would know whether a case was pending or not, wouldn't you? A. Well, the two cases to which I have reference are bankruptcy cases.

In the first one, Mr. Sullivan was appointed trustee in bankruptcy by the Court here, and a question came up involving a claim of the bankrupt under a contract -- there was a subcontractor, under a government contract, and I think Mr. Sullivan may have known that I had had some
971 experience in that field and he asked me to be the attorney for him as trustee in bankruptcy in connection with I think there were maybe two claims.

And I think that case is now closed. It was pending, as many bankruptcy cases are, for a long period of time. It was principally handled by one of the young men in my office.

Q. And what was the other case? A. The other case was a bankruptcy case in which I filed a claim on behalf of a client and ended up being appointed trustee in bankruptcy myself. I found that I needed an attorney and I asked Mr. Sullivan if he would act as attorney for the trustee in bankruptcy in that case, and I think that case is closed -- yes.

Q. Now, did you ever write to Mr. Sullivan and make a claim for this property which is the subject matter of this suit, before the suit was filed? A. No; I don't think I ever wrote any letter to Mr. Sullivan making a claim. We discussed it over the phone a number of times.

Q. Did you write to the executors and make a claim? A. No, sir.

972 Q. I will ask you, Mr. Gray, if that isn't the usual way of taking up cases before they are filed? A. What is the usual way? I don't understand you.

Q. Of communicating with the parties that you figure that you have a claim against. A. I communicated with the attorney for the party. He was the person that Mrs. McCord had told me was acting as attorney for Mr. Keith and Mr. Bird, the day she came to my office following her conference in that office, and, as customary and usual, I would not communicate directly with the person involved since I knew he had an attorney. So I communicated with his attorney.

Q. But you said at that conference the only thing in question was the jewelry. A. That is my recollection.

Q. Well, you testified that you was the one that decided that they should bring a suit, and so advised them.

Now, when did you advise them to bring this suit? A. Sometime between March and the date the suit was filed in 1960. I previously told Mr. Sullivan that I was going to file a suit.

Q. Then did there come a time when you and Mr. Sullivan discussed the matter of a settlement? A. Yes. I think so. I am sure --
973 yes. There was a conference in my office with Mr. Sullivan and Mr. Clark, but, I do not remember the date. But it was quite some time after the suit had been filed and there had been a lot of motions and other things going on, depositions.

Q. How did he happen to be in your office on that occasion? A. I don't know. Either I invited him or he suggested that he come in.

Q. Could you have been talking about one of these other cases that you and he were interested in? A. I think not, because my recollection is that both Mr. Clark and Mr. Sullivan were there.

Q. What was Mr. Sullivan's attitude in that conference with respect to a settlement? A. Well, the attitude was a very stiff one, very adamant.

Q. Did he indicate that he was willing to attempt a settlement? A. He indicated that he would recommend a settlement but it was of such an amount that it was inconsequential, and I said, "It is not worth our consideration."

974 Q. But your recollection is that he did offer to pay something in settlement? A. No; he did not. He said he would make a recommendation to his client.

Q. That he would make a recommendation for the payment of something? A. Yes.

Q. Mr. Gray, before lunch you testified that your impression was that Mr. and Mrs. McCord came to your office together. That was your recollection? A. On which occasion?

Q. On the first occasion. A. That is my recollection. I may be mistaken but I am not sure.

Q. I will read from your deposition. The question is --

MR. LASKEY: Would you be good enough to give me the page?

MR. LEEMAN: Page 2.

MR. LASKEY: Thank you.

MR. LEEMAN: The question is -- in order to get the connection I had better read a couple of questions before it so that you will understand:

"Question: Would you tell us, please, the first time you became acquainted with Mrs. McCord?

"Answer: About a year ago.

975 "Question: Had you ever known her before that?

"Answer: I had never known her before.

"Question: Did she come in to you or did she come in to the firm?

"Answer: She came in to me.

"Question: Did she come alone or with someone?

"Answer: To the best of my recollection she came alone."

BY MR. LEEMAN:

Q. Does that refresh your memory? Which is correct? A. It does not refresh my recollection. She might have come alone and she might have come with Mr. McCord. I know they were there together a number of times, and I think there were times when she was in my office by herself.

Q. Did you know Mr. McCord before you knew Mrs. McCord?

A. No.

Q. Did you know Doctor Richwine? A. Yes.

Q. Did you go to school with him? A. Well, we went to the same university at the same time.

Q. Did Doctor Richwine call or communicate with you about this case? A. No.

976 Q. You never had any conversation with him about this case?

A. I didn't say that.

Q. Did you ever talk with him on the phone? A. Yes.

Q. Did you call him or did he call you? A. I think I called him.

Q. Do you remember when that was? A. No; but I think it was some time after the suit was filed.

Q. Do you have any recollection of talking with him before the suit was filed? A. I am reasonably certain I didn't talk with him before the suit was filed.

Q. Is he your family physician? A. No.

Q. Now, Mr. Gray, did you know about these two \$5,000 government bonds and this \$1120 in cash before you filed this suit? A. I am not sure. During the recess I examined some notes, some of which are dated, which may fix the date when I learned about those matters.

977 Q. Mrs. McCord's deposition was taken after the suit was filed, was it not? A. Yes, sir.

Q. And your deposition was taken after Mrs. McCord's? A. Yes.

Q. And do you recall in that deposition that you testified that you did not know when you found out about these two bonds and this cash?

A. I don't know. If you will read the parts of the deposition to which you refer, perhaps I can answer the question.

Q. I am not referring to any questions in it. I am asking you the question. A. I can not recall what I testified to on that deposition.

Q. I didn't ask you that.

MR. LASKEY: Could I have the pending question read, if the Court please?

(Record read.)

MR. LASKEY: I object to the pending question and submit the witness has answered and he has said that he can not tell without being referred specifically to the deposition.

THE COURT: I sustain the objection.

978 If you wish to impeach the witness, why, you should do so by reading the question and answer, and then ask if he made the statement.

If he says he did, then that is impeachment if it is contradictory. If he said he didn't, you can call the reporter to testify as to what the notes show.

Now, what do you have to say, sir?

MR. LEEMAN: If Your Honor will indulge me I will look at this deposition.

THE COURT: Well, certainly I will. I just wanted my position clear in the record. That is the reason I didn't allow you to interrupt me.

MR. LEEMAN: Thank you, Your Honor.

BY MR. LEEMAN:

Q. I am reading from page 23 of the continuation of the deposition on November 21, 1961.

MR. LASKEY: Page 23?

MR. LEEMAN: It is Harlow C. McCord, and Robert M. Gray.

The question on page 23:

979 "Question: Now, at the time of filing suit, which was June of 1960, can you from your records tell me whether or not you knew at that time that Mrs. McCord had the two \$5,000 War Bonds and the \$1120 in cash money?"

Then there was a Mr. Wyland present representing Mr. Gray, who says:

"I am sorry, but I don't know that I followed you. Are you asking him if he knew before the suit was filed?"

"Mr. Sullivan: Before suit was filed that

"The Witness: If my recollection is correct, I answered that question when my deposition was taken before.

"Mr. Sullivan: On page 5 you did."

MR. LEEMAN: And may we look at that page, Your Honor?

THE COURT: Yes.

MR. LASKEY: I think that is incorrect. There a reference on pages 6 and 7.

It is also on page 5; I beg your pardon.

MR. LEEMAN: Now I am reading from page 4 of your deposition of April the 12th, 1961:

980 "Question: When Mrs. McCord gave a deposition in the next room here, in this suite, on July the 17th, 1960, she discussed certain bonds. Prior to that date tell us when you first knew that she had these bonds; that is, two \$5,000 U. S. coupon bonds now in the registry of the Court.

"Answer: I do not know that I can say with any particularity when I first knew that she had the bonds."

BY MR. LEEMAN:

Q. Were you correctly quoted? A. I think so, yes.

Q. "Question: Did you know prior to the date of the deposition that she had the bonds?

"Answer: I think I did. Yes."

In that are you correctly quoted? A. Yes.

Q. "Question: Do you recall how long before the deposition it was that you were aware of that fact?

"Answer: No."

Is that correct? A. Yes.

Q. "Question: You filed your suit around June 6, 1960. At the date of filing the suit were you aware of that fact at that time?

"Answer: I don't recall."

Is that correct? A. Yes.

981 Q. "Question: Do you have any records which would indicate the fact, any notes?

"Answer: I don't know."

Is your answer correct to that question? A. It was correct at that time, yes.

Q. Do you want to modify it now? A. No. That is what the situation was then and it is correctly reported.

Q. "Question: On page 50 she told of having some cash money which came out to \$1120. When was the first time you knew about that?

"Answer: Well, it was before the deposition but I don't remember when."

Are you correctly quoted? A. Yes.

Q. "Question: Was it before the suit was filed?

"Answer: I don't remember."

Are you correctly quoted? A. Yes.

Q. "Question: Last week we received some supplemental answers to interrogatories which told the denominations of the money. Do you recall those as \$10, \$20 and \$5 on page 50 of the deposition of Estelle McCord taken on July the 17th, 1960? Will you tell me what the denominations of these bills were in, if you know?

"Answer: Yes. I think they are still as they are. They are \$1.00 bills."

MR. LASKEY: Wait a minute, Mr. Leeman; you inserted a word there which does not appear in the transcript.

MR. LEEMAN: Pardon me; you are correct.

The answer, as printed here, is: "They \$1.00 bills."

BY MR. LEEMAN:

Q. "Question: There came a time when you got these bills. What were they given to you as, in 20s, or one dollars, or what?

"Answer: They were given to me in the form of numbers and bills, denominations as are indicated in the supplemental answers to the interrogatories."

Q. Was that answer correct? A. Yes.

Q. "Question: You were never given eleven \$1.00 bills?

"Answer: No."

Is that correct? A. That is correct.

Q. "Or even a \$1,000 bill?

983

"Answer: No."

Is that answer correct? A. Yes.

Q. Well, did Mrs. McCord tell you that this \$1100 that she says came from the cedar chest was in \$1.00 bills? A. No.

Q. Did she tell you how she found that money in the cedar chest?
A. Well, she said she found it in the chest in an envelope as I recall.

Q. And what did she tell you the denominations were? A. I don't recall that she told me what the denominations were. She told me she had taken the envelope with the bills in it and put it in her safe deposit box.

Q. So that the way she put the bills in the safe deposit box is the way she says she found them in the cedar chest; is that right? A. That is my understanding, yes.

Q. That is your understanding.

Although you heard about the one dollar denominations, didn't you? A. Do you mean when her deposition was taken?

984 Q. Yes. A. I don't know whether that is correctly reported or not. It may very well be, but I heard her deposition, yes.

Q. Well, this of course is your deposition. I am asking you about her deposition. A. That is the one to which I refer.

Q. And was it recorded as one dollar bills? A. It was recorded as one dollar bills and that may have been the way she said it but I am not sure.

Q. The first time that you were asked about the denominations of those bills, you omitted or refused to answer, did you not? A. What time was this, Mr. Leeman?

Q. I presume it was when your first deposition --

MR. LASKEY: I don't want a presumption of counsel. If he has a specific reference I think we are entitled to it, if the Court please.

MR. LEEMAN: Well, I will say when the first part of your deposition was taken April 12, 1961.

THE WITNESS: What is the question?

BY MR. LEEMAN:

Q. I am asking you if at that time one of the questions to you as to the denominations of the money, you refused to answer. A. I don't
985 remember. If you would read from the deposition, perhaps it would refresh my recollection.

Q. All right. I will find it for you. A. I know I refused to answer a number of questions.

Q. And you were taken to court and you were ordered to answer the questions. Do you recall that? A. I was ordered to answer some questions; yes.

Q. Well, do you recall that you were ordered to answer that one? A. Not specifically.

Q. Instead of the deposition you were served with interrogatories, were you not, with certain questions that you were requested to answer?

A. Me personally?

Q. Yes. A. I do not think any interrogatories were served directly to me personally.

There were interrogatories served directed to Mrs. McCord.

Q. That is correct; they were served on Mrs. McCord.

And do you recall that she refused to answer that, or that question was not answered in the interrogatories? A. Yes. I objected on her behalf.

Q. And then in the hearing before the court she was ordered to
986 answer. Do you recall that? A. Yes.

Q. And then she did answer, and at that time the denominations were placed at \$5, \$10, \$20, or something to that effect? A. Well, at that time the denominations were specifically set forth.

Q. But when she said she found \$1100 in one dollar bills, was that correct or not? A. I don't know what she found. I know what she told me.

MR. LEEMAN: That is all, Your Honor.

CROSS EXAMINATION

BY MR. LASKEY:

Q. Mr. Gray, with reference to your deposition on April 12, reading from page 6, a portion of which was read by Mr. Leeman, I will ask you if on that occasion you were also asked these questions and made these answers --

MR. LEEMAN: On page 12?

MR. LASKEY: Page 6.

MR. LEEMAN: Which deposition?

MR. LASKEY: Volume 1 of the April 12, 1961, I meant to say.

987 MR. LEEMAN: Page 6?

MR. LASKEY: Page 6, the last two questions and answers on that page and the first question and answer on the following page.

THE COURT: Proceed, Mr. Laskey, to read them, please.

MR. LASKEY: (Reading)

"Question: Do you have any records which would indicate when she first came; a diary or anything?

"Answer: My notes taken at the time of our conference might have a date on them.

"Question: That would be the only place that it would show, though?

"Answer: It might appear on my diary also."

BY MR. LASKEY:

Q. You gave that information to counsel at that time in that form?

A. Yes.

Q. And do you have notes which fix those dates? A. There are some notes there that are dated, yes.

Q. By reference to those notes can you refresh your recollection

as to the times on which these events took place? (Handing yellow sheets to witness.)

THE WITNESS: Well, it would depend upon what events but these are notes that I made.

988 Q. Do you have notes of a conference with Mrs. McCord --

THE COURT: Mr. Laskey, will you come to the bench a moment, please?

(At the bench:)

THE COURT: Now it may be that you are getting into some very confidential statements made between client and attorney. You asked him to look at his notes to refresh his recollection, and if he uses them, Mr. Leeman would be entitled to look at them.

MR. LASKEY: I am fully aware of that.

THE COURT: I just wanted to make sure that you knew you were skating on thin ice.

MR. LASKEY: I don't consider it thin ice, Your Honor. I am aware of the situation.

THE COURT: All right. That is all right.

MR. LASKEY: And it has been discussed with the client.

THE COURT: All right.

MR. LEEMAN: Will you show them to me? Or have it marked.

989 THE COURT: I have only made the suggestion, as I would to all counsel, to warn -- they forget about what the contingencies might be.

That was all.

If he has used them you can ask to look at them without a ruling. Go ahead.

(Open Court:)

BY MR. LASKEY:

Q. What papers do you have before you, Mr. Gray, just by general reference, without content? A. I have some notes dated March 21, 1960, entitled, "Conference, Mr. and Mrs. Harlow McCord."

Q. How many pages are in that group? A. There are four pages.

Q. All right. A. I have one dated July 5, 1960 and at the top it just says "Mrs. McCord."

It is five pages.

I have another one dated July 6, 1960, entitled "Conference, Mrs. McCord". There are two pages.

MR. LASKEY: I will ask that these be marked the next consecutive number to be the notes of March 21, 1960.

THE CLERK: Plaintiff's Exhibit 14.

990 (The document referred to was marked Plaintiff's Exhibit 14 for identification.)

MR. LASKEY: And the next exhibit being the notes of July 5, 1960.

THE CLERK: Plaintiff's Exhibit 15.

(The document referred to was marked Plaintiff's Exhibit 15 for identification.)

MR. LASKEY: And the next being notes dated July 6, 1960.

THE CLERK: Plaintiff's Exhibit Number 16.

(The document referred to was marked Plaintiff's Exhibit 16 for identification.)

THE COURT: Do you make a motion to look at them?

MR. LEEMAN: Yes, Your Honor.

MR. LASKEY: I will be glad to have you look at them.

THE COURT: The record will show that Mr. Laskey has turned them over to Mr. Leeman.

Can't you proceed now?

991 MR. LASKEY: I can't proceed without using them for the purpose for which we had them marked.

MR. LEEMAN: Your Honor, there is quite a bit here to examine. Would you want to take a five minute recess?

THE COURT: All right. Five minute recess.

(Short recess.)

THE CLERK: I have a Plaintiff's Exhibit Number 17.

MR. LASKEY: This is an additional note marked which has also been shown to counsel.

THE COURT: All right.

(The document referred to was marked Plaintiff's Exhibit 17 for identification.)

MR. LASKEY: If the Court please, during the recess we also had marked an additional exhibit number 17 for identification.

I will ask you, Mr. Gray, if that is also notes made in connection with conferences with Mr. or Mrs. McCord.

THE WITNESS: Yes; this is a memorandum of a conference with Mrs. McCord.

THE COURT: What is the date of that one?

MR. LASKEY: That is dated August 2, 1960, Your Honor, and the figure "8-2-60".

992 BY MR. LASKEY:

Q. Showing you what has been marked for identification as Exhibits 14 through 17, inclusive, I will ask you to state what they are, the circumstances under which they were made, and the dates they were made. A. Plaintiff's Exhibit 14 is dated March 21, 1960. It is a memorandum that I made of a conference with Mr. and Mrs. McCord about the Jeffords estate.

Q. All right; the next one. A. Plaintiff's Exhibit 15 is dated July 15, 1960, and is entitled, "Mrs. McCord", and it is a memorandum of a conference that I had with Mrs. McCord and things she told me during that conference.

Plaintiff's Exhibit 16 is dated July 6, 1960, entitled, "Conference, Mrs. McCord." Again, a record of what she told me at that time. As I recall, these Plaintiff's 16 -- 15 and 16 were made because Mrs. McCord's deposition was going to be taken shortly thereafter and I wanted to review her entire relationship with Mrs. Jeffords and the entire circumstances surrounding the Jeffords estate with her and prepare for her deposition.

Q. By reference to those notes made on those dates, meaning Exhibit 14 through 17, can you refresh your recollection as to when certain facts came to your knowledge and how they came to your knowl-

993 edge? A. Yes.

Q. In connection with the conference of March of 1960 what came to your attention at that time with respect to physical properties which are concerned in this litigation? A. The gift of the chest and its contents came to my attention, and the circumstances under which Mrs. McCord removed it from Mrs. Jeffords' house and took it to her own house.

Also, the circumstances regarding the visit two days later wherein Mr. Bird went to Mrs. McCord's house to examine the contents of the chest. And one other item: the notation of the time when Mrs. Jeffords' will was removed from the safe deposit box and Mr. Bird calling Mrs. McCord to tell her about it.

Q. Can you state whether or not Mrs. McCord referred in that conference of March of 1960 to securities as the generic general term "securities" without specific certificates of specific companies? A. She did.

Q. Can you state whether or not she was able to give an exact itemization of these securities? A. She was not.

Q. Did she say anything with respect to securities and securities having been in the chest at the time A. Yes.

995 Q. Do you recall what that was? A. Yes.

Q. What was it? A. She said that Mr. Bird came to her house, they went through the chest, he gathered up some papers, including securities and other miscellaneous papers, and took them with him. She said she expected him to return the securities to her.

She said that she understood that Mrs. Jeffords had given her the chest and the contents.

She also said that after Mr. Bird was at her house on the 21st she mentioned this to her husband and he said, "You ought to know the value of what was in it for tax purposes", and that she the next day spoke to Mr. Bird about it and he said the court would have to decide whether the securities would be given me.

Q. Is there any reference in the notes of that conference to money? A. Yes.

Q. And by referring and refreshing your recollection, can you tell us what was said with respect to money? A. Well, she told me that she found an envelope containing a little in excess of a thousand
995 dollars -- she didn't know the exact amount -- and she also told me that Mr. Bird didn't know this.

Q. And did you do anything to emphasize any part of that memorandum at that time? A. I underlined the part -- the note that I made that Mr. Bird didn't know about it, so I would be sure not to forget it because there might come a time when we would want to disclose that in order to make sure that I was aware of it.

Q. Now is there anything in the memorandum of that March conference with respect to the two United States negotiable Treasury bonds which are the subject of the cross-claim in this suit? A. No.

Q. Directing your attention now to the conferences of July 5 and 7 which would be Exhibits 15 and 16, can you state whether or not that was in essence one conference continued over two days? A. I think it was, yes.

Q. What was the subject matter of the discussion at that time -- I believe you said you were in the course of preparation for the taking of the deposition of Mrs. McCord. A. One of the things we talked about were these two \$5,000 Treasury bonds.

996 Q. And what, if anything, did Mrs. McCord tell you at that time with respect to those bonds? A. Well, she told me --

THE COURT: What is the date of this, July 5?

[THE WITNESS:] July 5, 1960.

She told me that in the spring of 1959, March or April, Mrs. Jeffords had been ill, and Mrs. McCord persuaded her to go to the doctor, a doctor, and Doctor Al Richwine. Then she had complete X-rays at Groover, Christie and Merritt. No malignancy was found, only hardening of the arteries.

Mrs. Jeffords' father died of malignancy of the intestines, she was afraid she might have the same thing, and might have to have an operation.

One day she spoke to Mrs. McCord and said, "I think I am going to have to have this thing done. I have got things pretty well planned. I want you to take me to your doctor, make an appointment. I don't know what this is going to be. I may have a long illness. I have two bonds here that I want you to keep. This is an agreement between you and me. I think you should buy the bonds from me; a sort of token agreement. Just give me a check for \$25.00. I want you to take care of me."

997 She had two \$5,000 U. S. Treasury coupon bonds on the table and said, "These bonds are to take care of me in case I have a long illness, and the coupons will always be deposited to my account. You keep them. If anything happens to me, these weren't a gift, I sold them to you. This is between you and me and you are not to tell anybody."

Mrs. McCord gave her a check for \$25.00.

The interest came due on one bond as she was not sure of the date, she thought possibly July, and another one in September. Mrs. Jeffords about that time said, "It is about time to take the bonds down to get the coupons deposited" so Mrs. McCord took the bonds to Mrs. Jeffords' home; then she took Mrs. Jeffords to the bank where Mrs. Jeffords clipped the coupons and took them; so far as Mrs. McCord remembered, they were deposited in either a bank or building association in the account of Mrs. Jeffords. Mrs. Jeffords then returned the bonds to Mrs. McCord.

Now, further --

BY MR. LASKEY:

Q. Are you still on the July 5? A. Still on the July 5 memorandum. There is more in it.

Q. All right. Tell us what that was. A. On October 11, 1959, Mrs. Jeffords was taken sick. Mrs. Souder, the roomer, called Mrs. McCord and asked her to come, that Mrs. Jeffords was ill. So Mrs.

998 McCord went, told Mrs. Jeffords she ought to call the doctor, but Mrs. Jeffords would not allow it. Mrs. McCord went home about ten p.m. Mrs. Jeffords said she was feeling better.

The next morning, October 12, Mrs. McCord went to Mrs. Jeffords' house as the result of another phone call from Mrs. Souder, that Mrs. Jeffords was ill. Mrs. Jeffords called Doctor Richwine and asked him to meet at Mrs. Jeffords.

They met at Mrs. Jeffords. The doctor examined her, and said "Can you whistle"? She whistled Dixie.

Doctor thought some blood vessels had ruptured in her head and it would be better for her to be up rather, and be moving rather than in the bed. Mrs. McCord took her for a ride out to Mrs. McCord's house. They did.

Mrs. McCord tried to get her to stay but she wouldn't.

Mrs. McCord took her home after dinner and spent the night with her.

The next day she was worse; Mrs. McCord stayed three straight days. Mrs. Fleming, a friend, also stayed some, spelling Mrs. McCord.

They finally got a nurse for 12-hour duty, 8 a.m. to 8 p.m., Mrs. Rochambeau. Then it became necessary to have nurses around the clock and a cook to feed the nurses and Mrs. Jeffords.

999 They first got Mrs. Wilhite, and then there is a question with the notation of "Pen".

Q. No last name? A. No last name. That may mean that Penny was first called, and then Mrs. Wilhite.

Rochambeau left, and then Mrs. Cole took her place as day nurse. Then Mrs. Michalka followed Cole. Toward the end of December, the twenty-first, Wilhite became ill so Michalka and Willy May, the cook, split the duties between them.

Rochambeau and Penny -- no last name -- did not get along, and about this time Mrs. McCord suggested to Mrs. Jeffords that she ought to go into a nursing home. Mrs. Jeffords was indignant, she wouldn't go, reminded Mrs. McCord of the bonds and of the agreement about them.

Cole and Wilhite worked well together and things quieted down. Mrs. Jeffords was better. Got in the wheelchair. Took some steps. This was before Thanksgiving.

Cole hurt her back in early December and Michalka replaced her. Michalka and Wilhite got along well.

Right after Cole left, Mrs. Jeffords had a spell.

That was when she said "You thought I was going to die." This was in Michalka's presence and the time she told about the chest.

1000 Started intravenous feeding on Saturday, December 19; on Sunday night, December 20, Mrs. Jeffords had a coronary; was completely paralyzed; died on December 25."

Q. Does that cover the conference of July 5? A. Yes.

Q. How about the conference of July 7? A. July 6th is the next conference.

Q. July 6th, then. A. These notes are entitled "History of Relationship with Mrs. Jeffords."

Q. What is the substance of the notes, to refresh your recollection, and state what that recollection is as to the substance of the conference. A. Well, Mrs. Jeffords told me her age, which was then 52 years, said that her maiden name was Estelle Smith. Said that when she was a little girl some three to six years of age, Mrs. Jeffords, who was then Mrs. Paul, wanted to adopt her.

Mrs. Jeffords had no children by either of her marriages.

At that time they were living near each other, R Street here in Washington. Mrs. McCord was living with her mother. Her mother worked during the day and after school the children stayed with the grandparents, who lived nearby. But her mother would not consent to
1001 the adoption, and Mrs. McCord stayed with her mother until she graduated from normal school in 1927. Mrs. Jeffords wanted her to live with her and Mrs. McCord's mother agreed and Mrs. McCord moved in with Mrs. Jeffords, who was still then Mrs. Paul, and she went to George Washington University.

And she lived with Mrs. Jeffords until June of 1930, and in June of that year Mrs. Jeffords took her on a trip to Europe.

This relationship had always been very close and friendly, almost like a daughter.

Then Mrs. Jeffords married Tracy Jeffords, sometime in the middle or late 30s, and the relations between Mrs. McCord and Mrs. Jeffords was still pleasant but not as close as previously.

Mr. Jeffords died in 1949, ten years before Mrs. Jeffords died. Mrs. Jeffords was always generous to Mrs. McCord, and to her three children.

After Mr. Jeffords died, the relationship again was very close. She has given Mrs. McCord many gifts; a diamond pin on her 50th birthday, a diamond ring in February of 1959, her mother's silver service in 1951, a tray for silver service in June of 1958.

1002 Mr. Bird entered the picture after Mrs. Jeffords married Mr. Jeffords. He may have been an associate of Mr. Jeffords'. Mr. Bird represented Mrs. Jeffords after Mr. Jeffords died.

She evidently renounced and took a widow's share.

Sometime around in 1957 Mrs. Jeffords' eyesight began to fail and she asked Mrs. McCord to keep her income record --

Q. Let me interject there before we lose it, Mr. Gray: That interpolation there appears to be something of yours rather than something Mrs. McCord told you. Isn't that correct, that she evidently renounced? Or is it something she said? A. I think it is something she told me.

Q. I see. Continue, please. A. Well, somewhere around 1957 Mrs. Jeffords' eyesight began to fail and she asked Mrs. McCord to keep her income records and prepare checks for her signature, do her income tax returns, all of which Mrs. McCord did.

And that is the end of that memorandum.

Q. Now, directing your attention to the August 2 Memorandum which is Exhibit Number 17, what subject matter does that deal with?

A. Two subject matters: money from the cedar chest and the Treasury bonds.

1003 Q. It is partly in ink and partly in pencil. Can you tell us how that came about? A. Well, I made a listing of what Mrs. McCord told me came from the chest -- money in the envelope, and there was some

money in a black purse and some money in an American Security and Trust Company wallet.

And she brought me the money. She told me she got it from the safe deposit box. And I made a notation of the numbers and denominations of the bills.

She also brought me the Treasury bonds and I made a notation of the description of each of the bonds, which is what this memorandum consists of.

Q. And can you state whether or not that notation had anything to do with the preparation of answers to interrogatories, or was it just general? A. I think it had something to do with -- because we had to get the details, because I think some interrogatories were asked.

Q. Did one interrogatory deal with the denominations of the bills which were in the envelope marked "\$1,000" but in fact containing \$1100? A. Yes.

Q. And did you put those denominations down in pencil alongside the totals there on your memorandum? A. Yes.

1004 Q. Can you tell us what those denominations were? A. Well, there was \$80 in a black purse consisting -- and \$40 in an American Security and Trust Company wallet, consisting of four \$20 bills and four \$10 bills.

Q. How about the \$1100? A. The \$1100 was in an envelope marked "\$1000". It contained Thirty-one \$20 bills; 45 - \$10 bills; and six \$5 bills.

Q. Was that information included in the answers to the interrogatories which were filed in this court sometime in 1960? A. Well, I don't know when the answers were filed to the interrogatories, but this was included in my paper entitled "Supplemental Answer to Interrogatories".

Q. And that was filed? A. Yes.

Q. Mr. Gray, directing your attention to your conversations with Mr. Sullivan before suit was filed, did there come a time when you made

known to Mr. Sullivan before the filing of the suit that there was a claim by Mrs. McCord to securities which had been contained in the chest and which had been turned over to Mr. Bird? A. Yes.

1005 Q. Fix, to the best of your ability, the time that was done. A. I think it was not on the first occasion when I called Mr. Sullivan in January, but I think it was sometime later, possibly in February or March.

Q. What did you make known to Mr. Sullivan with respect to her claim? A. I made known to him that Mrs. McCord told me that there were securities in this chest, that Mr. Bird had taken them, that she had allowed him to take them, and the question arose about the matter of whether they were endorsed or not.

I had looked this question up and I gave to Mr. Sullivan over the telephone a reference to the section of the D. C. Code which is a portion of the Uniform Transfer of Securities Act.

Q. Did he later discuss that with you and indicate that he, in company with anyone else, had done some research on the question? A. I do not think so. It was perfectly plain, though, that I told Mr. Sullivan that there were securities in the chest. Also perfectly plain that we did not know specifically which securities they were.

1006 Q. Now, from that time forward what, if any efforts did you make to ascertain the identity of the particular securities which were turned over to Mr. Bird by Mrs. McCord? A. Well, first I obtained a photocopy, and I may have gotten this from Mr. Sullivan, I am not sure, but anyway I obtained a photocopy of the inventory which Mr. Bird and Mr. Keith, as executors, filed in the Probate cause in this court. And I went over that inventory with Mrs. McCord to see if it would refresh her recollection as to exactly what securities were in the chest.

Q. Did it? A. It refreshed her recollection as to the names of some of the securities but she could not be sure about the numbers of shares, nor could she be sure of the names of the names of all of the securities that were involved.

Q. The names of all the companies you mean? A. The names of all the companies; yes.

Q. And this was before suit was filed? A. Yes.

Q. Now, after the suit was filed did you make efforts to learn the identity of the securities which had been turned over to Mr. Bird by Mrs. McCord? A. Yes.

1007 Q. Did you use the processes of this court in those efforts?

A. I did.

Q. Were your efforts resisted? A. Vigorously.

Q. The item or the inventory which is identified as Plaintiff's Exhibit 6-B in this record, did you get that voluntarily? A. I did not.

Q. How did you get it? A. Well, it was the result of a series of difficult maneuvers.

Q. Court maneuvers? A. Court maneuvers; yes.

I took Mr. Bird's deposition first, and he was a very difficult witness. I think Mr. Sullivan was his counsel at that deposition. Mr. Bird finally, and very reluctantly admitted that there could have been securities in the chest, that in the papers that he took from the chest at the time that he was at Mrs. McCord's house, but he said Mr. Sullivan would know.

So then I took Mr. Sullivan's deposition and Mr. Sullivan refused to answer questions on the grounds of privilege, and I forget in his first
1008 deposition whether he made any listing of what he got or not, but in any event, when he refused to answer questions I filed a motion to require -- to have the Court require him to answer questions.

As a result of that he was required to answer questions and it disclosed that he had made a partial list of the things that had been turned over to him by Mr. Bird.

Then I filed a motion to require him to produce it for inspection and copying.

Q. That is Step 3? A. And that was vigorously opposed. But the motion was granted, and Mr. Sullivan sent me a copy of his list, which is Exhibit 6-B, which came along with a copy of his letter, Exhibit 6-A.

Q. Did you make any attempts to have produced for examination the specific securities? A. Yes.

Q. Do you recall whether or not Mrs. McCord, on the occasion of her deposition, which I believe was in June of 1960 -- beg your pardon; it was July 7, 1960 -- had at that time indicated or testified that examination of the specific certificates which had been in the chest would assist her in her identification? A. Yes. She testified to that on her
1009 deposition. As I recall, she said if the securities were exhibited to her, she thought it would refresh her recollection.

So then I filed a motion to compel the executors to exhibit to us for inspection all of the securities which were in the inventory which was filed in the Probate Court.

We did not at that time know about Mr. Sullivan's memorandum -- or at least if we knew about it, it had not been produced. I don't think we knew about it at that time.

In any event, I filed a motion to compel them to exhibit all the securities, and that motion was denied.

Q. And you never did get to examine the securities nor did Mrs. McCord? A. No.

Q. Now, Mr. Gray, some reference has been made to your prior knowledge of Doctor Richwine and I think you stated you and he went to the same university. Which university was that? A. The George Washington University.

Q. And what courses or what profession was he preparing for?
A. He was preparing for the medical profession.

Q. Were you closely associated? A. No.

Q. Now, just briefly, Mr. Gray, about your personal history:
1010 You were asked if you were a member of the Bar. How long have you been a member of the Bar of this Court? A. Thirty years.

Q. And are you a member of the Bar Association? A. Yes, sir.

Q. Have you ever had any office in that Association? A. Yes, sir. In 1943 I was Chairman of the Junior Bar Section.

Q. That is a section of the entire Bar Association? A. Yes; it is the younger -- in other words, it is like being president of the younger bar group.

More recently I was a member of the Board of Directors for a two-year term.

Presently I am serving as a member of the Judicial Selections Committee, a committee elected by the Directors of the Association to make recommendations for judicial appointments.

Q. Have you been actively engaged in your practice since some 30 years ago? A. Yes; with the exception of a couple of years out for military service and one year in the early 30s when I worked in the Lands Division of the Agriculture Department.

MR. LASKEY: That is all, Your Honor.

1011 MR. LEEMAN: You don't offer those notes in evidence?

MR. LASKEY: I will be glad to.

Thank you for reminding me.

I will offer them in evidence at this time.

THE COURT: Do you object?

MR. LEEMAN: It poses a nice question, but I think I should object.

THE COURT: Sustained.

REDIRECT EXAMINATION

BY MR. LEEMAN:

Q. Mr. Gray, you have a date of the third month, 21st day of 1960 on there? A. Yes, sir.

Q. Were these notes all written on that day? A. Yes, sir.

Q. Now, in your note you have here, "On December the 17th, after this conversation, Mrs. McCord talked to Mr. Bird and he said go and take the chest."

I started to read too far down. I will start at the top.

MR. LASKEY: I can barely hear you, Mr. Leeman.

MR. LEEMAN: Can't you hear me?

1012 MR. LASKEY: I can just barely hear you and I am afraid they can't, further down.

MR. LEEMAN: I thought I was talking loud enough.

Can the jury hear me now?

("Yes" nods.)

MR. LEEMAN: "On Thursday, December 17, 1959, Mrs. Jeffords said to Mrs. McCord: 'I want you to take that chest. I gave it to you some time ago and you have not taken it.' Earlier Mrs. Jeffords had said she was the chest and its contents, antique silver, securities

BY MR. LEEMAN:

Q. That is what Mrs. McCord told you on that date? A. That is a memorandum of my recollection -- of my notes of the conference we had, yes; and that is what she told me.

Q. You have quotations here as if you are quoting what she said.

A. That is right.

Q. Are you quoting what she said? A. Yes.

Q. "On Saturday morning, Mr. Bird said, 'If you are going to take that chest you had better take it. An old-fashioned cedar chest, had sheets, pillowcases, old gloves, birth certificates, silver, and securities'."

1013 Is that from your notes?

Is that what was said on that date? A. Yes.

MR. LEEMAN: That is all I care to ask you at this time.

MR. LASKEY: Nothing further, Your Honor.

THE COURT: Stand down, Mr. Gray.

* * * * *

1036

MILDRED BIRD

was called as a witness, and, being first duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. LEEMAN:

[Q.] Will you state your full name for the Judge and Jury?

A. Mildred Bird.

Q. Where do you live, Mrs. Bird? A. In Washington. 2707
Woodley Road, Northwest.

Q. And you are the wife of Mr. James F. Bird? A. Yes, I am.

Q. Now, Mrs. Bird, you knew Mrs. Laura L. Jeffords in her life-time? A. Yes, quite well.

Q. How long did you know her? A. Well, Mrs. Jeffords came to our apartment. I don't know whether it was 1947 or 1948, on some little matter of business, and following that we became very good friends.

1037 Q. And from that time until her death did you see her frequently?

A. Oh, very often. She started asking me to go places with her and do things together, and I saw her very often.

Q. I will ask you whether or not there came a time when she asked you to write a letter to a doctor in Baltimore for a report for her.

A. Yes. She came to our apartment in -- I don't remember whether it was late summer or early fall of 1953 -- and said she would like to have me go with her to Johns Hopkins in Baltimore, that she was very much worried about her eyes. So I went with her and Doctor Randolph examined the eyes and said that she --

MR. LASKEY: I object.

THE COURT: Sustained. You can't state what Doctor Randolph said.

THE WITNESS: I am sorry.

BY MR. LEEMAN:

Q. You can't state what Doctor Randolph said, Mrs. Bird. A. I see.

Q. You did go to Baltimore with her? A. I went to Baltimore with Mrs. Jeffords and after the examination we went to lunch and I read
1038 the menu to her, and following that, when we came back to Washington after not too long a time, she said she would like to have another examination just to corroborate that one, and so I went to another doctor with her.

Q. Did there come a time when you wrote to this doctor in Baltimore and asked him to send Mrs. Jeffords a report? A. Yes. In the

spring of 1954 she came to our apartment -- I don't remember, I think I was at her house that time; anyway she said her eyes were worse and that she wanted me to write to the doctor and tell him that her eyes were worse.

So I wrote to him and told him, and had a reply.

MR. LASKEY: I object.

THE COURT: I sustain the objection.

BY MR. LEEMAN:

Q. Mrs. Bird, I will show you Defendant's Exhibit Number 3, to which is attached an envelope, and I will ask you if you recognize the handwriting. A. Yes; that is my handwriting on the envelope.

Q. On the envelope? A. Yes.

1039 Q. And what did you do with that envelope after you signed it?

A. What did I do with it?

Q. Yes. After you wrote this on here. A. Oh; I sent that to Baltimore for to return to me. That is a return envelope. Is that what you mean?

Q. And who did you sent it to in Baltimore? A. The doctor. Doctor Randolph.

Q. Then did there come a time when you saw this envelope again?

A. Yes. He returned it to me with this letter in it.

Q. Well, did he return it to you? A. He sent me -- this is Mrs. Jeffords' letter but he sent me one with a note on it about the copy of Mrs. Jeffords' letter.

That is the one he sent me, over there. (Pointing).

MR. LEEMAN: I will ask you to mark this as Defendant's Exhibit whatever number the next one is.

THE CLERK: Defendant's Exhibit Number 20 for identification.

(The document referred to was marked Defendant's Exhibit 20 for identification.)

1040 MR. LASKEY: Is that a copy of Exhibit Number 3, which has been marked for identification?

MR. LEEMAN: That is right.

BY MR. LEEMAN:

Q. Now, Mrs. Bird, what are these, this envelope and two papers which have been marked Defendant's Exhibit 20? A. It is Doctor Randolph's reply to me with a copy of the letter sent Mrs. Jeffords.

Q. And was this mailed to you? A. In that envelope, one of them, yes.

THE COURT: You will have to keep your voice up, Madam. We can't hear you.

THE WITNESS: I am sorry, sir.

THE COURT: All of them will have to hear you.

THE WITNESS: Sorry.

BY MR. LEEMAN:

Q. Now, did you ever see this envelope with your writing on it and this Defendant's Exhibit signed by Doctor Randolph again? Did you see that when it was received? A. Yes. Mrs. Jeffords showed me the letter. Of course, I had the copy, too. Is that what you mean, sir?

1041 Q. Yes. This is the letter that Mrs. Jeffords received in the envelope written by you? A. Yes, it is.

Q. And that is the envelope that you sent to the doctor in Baltimore? A. Yes; I sent the envelope to him.

MR. LEEMAN: I offer this in evidence, Your Honor.

MR. LASKEY: Object.

THE COURT: How can it be possibly admissible? The doctor's testimony is the best evidence.

I sustain the objection.

MR. LEEMAN: Well, Your Honor, --

MR. LASKEY: If there is to be extensive argument I think we have to approach the bench.

THE COURT: If you wish to make an argument, come to the bench, although I can't understand on any basis how you could assume it is admissible.

(At the Bench:)

THE COURT: How can it possibly be admissible, Mr. Leeman?

MR. LEEMAN: I have traced that this witness wrote to this doctor for a report on Mrs. Jeffords' eyes.

1042 She testified she sent this envelope which she addressed to Mrs. Jeffords, to the doctor, and she says that a copy of this letter was sent to her and that the original was mailed back in this envelope from Doctor Randolph. It was a letter in response to a request from her, it is on his stationery, and that is the best evidence of what the doctor said. There it is.

THE COURT: Mr. Bird, the authenticity of the letter is not questioned, as I understand it; is that correct?

MR. LASKEY: That is correct, sir.

THE COURT: The point is, the best evidence of the doctor's diagnosis of this lady's eye condition is the testimony of the doctor. So that it can be subjected to cross examination.

MR. LEEMAN: Well, this is a report that he submitted.

Now, if he was here testifying physically, this goes in for something that has been done by the doctor.

THE COURT: I sustain the objection.

There is no basis whatever under the laws of evidence, that I know, that make that admissible to establish her eye condition as of that time.

If you feel you can find any authority for that, look it up and then resubmit it. But I don't think you can.

1043

(Open Court:)

BY MR. LEEMAN:

Q. Mrs. Bird, I show you a paper and ask you what that is.

THE COURT: Has that paper been marked as an exhibit?

MR. LEEMAN: It has been marked Plaintiff's Exhibit 7, Your Honor.

THE COURT: Very well. Identify it when you show it to her so the record will be clear.

MR. LASKEY: Yes, Your Honor; that has been marked and read to the jury.

THE COURT: Very well. Now you show her exhibit number what, Mr. Leeman?

MR. LEEMAN: Plaintiff's Exhibit Number 7.

THE COURT: All right. Now you may ask any question you have in respect of it.

BY MR. LEEMAN:

Q. Mrs. Bird, you have seen that before? A. Yes, I have.

Q. And whose writing is that? A. Mrs. Jeffords' writing.

1044 Q. Did you ever have that in your possession? A. Yes. In 1955 one day when I went to her house, she handed this to me and said, "Here; read this to me so I can see whether you can make it out", because she wrote without good eyes.

Q. That was in 1955? A. Yes; January 1955.

MR. LEEMAN: Now, Your Honor, this is marked Plaintiff's exhibit. I don't know whether it has ever been offered.

MR. LASKEY: It has been offered and read in evidence.

MR. LEEMAN: Has it been admitted in evidence?

MR. LASKEY: It has been offered, received and read.

MR. LEEMAN: Is that correct, Mr. Clerk?

THE CLERK: That is right. It was received on September the 23rd.

BY MR. LEEMAN:

Q. Mrs. Bird, I am going to ask you to read that aloud --

MR. LASKEY: I object.

THE COURT: I sustain the objection. It has already been read to the jury once.

1045 You can read it when your time for argument comes, if you think it is necessary.

MR. LEEMAN: Very well.

THE COURT: We will take a five minute recess.

(Short recess.)

BY MR. LEEMAN:

Q. Now, Mrs. Bird, do you recall when Mrs. Jeffords was taken sick in her last illness? Are you able to hear me? A. Not quite.

Do I recall when Mrs. Jeffords was what?

Q. Do you recall when Mrs. Jeffords was taken sick? A. Yes, I do.

Q. In her last illness. A. Yes.

Q. Approximately when was that? A. The 13th of October was the day that we were sent for, that she sent for us.

Q. And did you go to her house on that occasion? A. We did.

Q. And what was her condition when you got there on that date?
A. Well, she had apparently had a stroke of some kind and was not able to walk without help, and not quite herself.

1046 Q. And from that time until her death how frequently did you see her? A. Well, I don't believe I missed a day going up. I was there a great deal of the time.

I stayed with her, nursed her one night in October, all night.

Q. What was her condition during that period of time as best you can relate?

MR. LASKEY: You are talking about October now, Mr. Leeman?

MR. LEEMAN: From October until December the 25th.

THE WITNESS: What was her -- I didn't quite understand you.

BY MR. LEEMAN:

Q. Tell us about what you found her condition to be. A. Oh, well, she was in bed most of the time. They lifted her out occasionally into a chair, I think, and then the last week of her illness she was completely out, completely helpless.

Q. Would you say that she was unconscious the last week or so?
A. I don't know whether to say she was unconscious. She was just lying there and I don't know whether to call it a coma, or not; I am not an authority on that. But she was lying there in a very helpless state, not

1047 seeming to notice much of anything.

Q. Now, from about October the 17th to the date of her death, would you tell us whether or not in your opinion her condition was such that she could transact business and understand the transaction of business? A. I am not sure that I can answer that satisfactorily. On October 17, you say?

Q. Yes. A. Well, I don't know if Mrs. Jeffords --

MR. LASKEY: I object, if the Court please.

THE COURT: Perhaps she wishes you to pinpoint the date a little better; I don't know. Can't you take that month by month? Maybe then she would be able to do better; I don't know.

THE WITNESS: Did you mean -- from December 17 she was in very bad condition.

THE COURT: Now, Madam, don't volunteer. Let him reframe the question.

THE WITNESS: I beg your pardon.

BY MR. LEEMAN:

Q. During the month of November did you see her almost daily?

1048 A. No; I didn't see Mrs. Jeffords daily; because some times I was not -- I worked in the kitchen and did a great many things like that, and sometimes I was not very welcome up there, not by Mrs. Jeffords, because she always gave me a very warm smile when she saw me.

Q. When you say you were not welcome up there, who do you refer to? A. Well, I didn't feel that Mrs. McCord and the nurses were particularly eager to have me come.

Q. Do you recall one occasion when they sort of escorted you out of the room? A. Yes. I do recall. That was when Mrs. Michalka first came.

Q. And when would that be, do you know? A. The 17th of December, 1959. I don't know whether it was the 17th or the 18th. There seemed to be very few people in the house; that house was very quiet. And I was in the kitchen doing something, and I thought of the new nurse upstairs and I knew Mrs. Jeffords was just lying there not needing much attention, and I thought, "What a dull time she must be having"; the nurse, Mrs. Michalka; so I thought I would go up and ask if she wanted something to read.

1049 So I could see from the bottom of the stairs, Mrs. Jeffords' door, that the door to Mrs. Jeffords' room, that is, was open. So I went up. I paused just a moment in the doorway, and I saw that Mrs. McCord was

there. I hadn't known that she was in the house. And Mrs. Michalka, the nurse, and Mrs. McCord, were sitting very close together on the side of one of the beds, and when they saw me they seemed a little bit -- quite surprised, I don't know -- and I stepped just inside of the room and they rushed over to me, -- we were very friendly; we were all very quiet, even though Mrs. Jeffords couldn't be disturbed -- I told Mrs. Michalka why I had come, to see if she wanted reading material, and I don't think the whole thing took more than one minute from the time I got to the door. I felt Mrs. McCord's arm around my shoulder and I was being politely but very gently ushered out of the door.

So I came on downstairs.

I was so puzzled, I didn't know what it was about.

MR. LASKEY: I object to the voluntary statement.

THE COURT: I sustain the objection.

You have answered the question.

BY MR. LEEMAN:

Q. What was the condition of Mrs. Jeffords' eyesight?

THE COURT: Mr. Leeman, have you forgotten the other question you had asked her and she said she couldn't answer it put that way, or something to that effect? Do you wish to abandon that?

1050 MR. LEEMAN: I don't recall it, Your Honor.

THE COURT: Well, you got off on a tangent here.

You asked her whether she was in condition to transact business between October 15 and Christmas day, and the witness, as I recall it, said she couldn't exactly answer that question, and I said she may have difficulty because you are not pinpointing the exact time.

Now do you wish to pursue that?

MR. LEEMAN: Yes, I do.

THE COURT: I thought you might have forgotten it.

MR. LEEMAN: I had, Your Honor.

THE COURT: All right. Now you may pursue it and see if she can answer it.

BY MR. LEEMAN:

Q. Now, Mrs. Bird, about October the 17th, the days following that in the month of October, the latter part of October of 1959, from your observation of Mrs. Jeffords would you say her condition was such that she could transact business? A. I wouldn't think in the latter part of the month that she was.

Q. And at that time what was the condition of her eyesight?

1051 A. Well, her eyesight was very poor. Is it permissible for me to give an illustration?

MR. LASKEY: I think the witness should restrict herself to answering questions.

THE COURT: No; not unless you are asked, and I will rule on any questions.

BY MR. LEEMAN:

Q. What did you base your knowledge on of her eyesight? A. Of her eyesight? Well, from the reports from the two doctors, and also the fact that Mrs. Jeffords --

MR. LASKEY: I object if it is based on the report from the doctor.

THE COURT: I sustain the objection.

THE WITNESS: Also --

THE COURT: No. I have sustained the objection.

THE WITNESS: Excuse me, Judge.

BY MR. LEEMAN:

Q. Now, Mrs. Bird -- A. Sir?

Q. -- tell us what you saw yourself. A. Mrs. Jeffords would ask me to read things to her. She couldn't read. And she could see a movement on the side, from the side of her eyes but she couldn't see,
1052 for instance, the azalea bushes that were about 12 or 13 feet from the back window. One day she and Ellie, the housekeeper, and I were there and I said "Oh, they are so beautiful"; she said, "I can't see them"; and she just couldn't read or see any of those things, at all. She couldn't see the telephone dial and things like that. She couldn't make out any of those things.

Q. And did that condition continue until her death? A. Oh, yes.

And --

THE COURT: You have answered that.

THE WITNESS: Okay. Excuse me.

BY MR. LEEMAN:

Q. Mrs. Bird, do you recall a time during her last illness when Mrs. Jeffords collapsed in the bathroom? A. Yes, I do.

Q. And did you see it? A. I saw her just after her collapse.

Q. And what did you do -- anything? A. The nurse had pounded on the floor for help. Mrs. Souder, the roomer, and I were downstairs and we both went upstairs. Mrs. Jeffords was in a bad condition in the bathroom. She couldn't stand up with help, even, and it was a very narrow room. We couldn't get around her to lift her easily because one of us couldn't do it alone. So I ran out into the street and there didn't seem to be anybody else around there. I ran out into the street and a young man passing, came and lifted her at the nurse's direction, onto the nearest bed. Then when Mr. Bird came he carried her to her own bed.

Q. Now, Mrs. Bird, during her last illness, at any time when you were with Mrs. Jeffords did you hear her give any of her property away?

A. No, I did not.

Q. Did you hear her give her cedar chest away? A. No.

Q. Did she tell you at any time during her last illness that she had given any of her personal property to anyone? A. No.

Q. Mrs. Bird, I will show you Plaintiff's Exhibit Number 7 again, and ask you whether or not you ever had a conversation with Mrs. McCord with reference to that. A. This is a letter giving instructions for --

MR. LASKEY: That is not responsive. I object.

THE COURT: I sustain the objection. You must make your answer responsive.

THE WITNESS: All right.

1054

BY MR. LEEMAN:

Q. The question was -- A. The question was, did I ever talk to Mrs. McCord about this letter.

Yes, I did; when Mrs. Jeffords was just at the point of death, when there was no possible hope for her. And Mrs. McCord read the letter, and I said, "Possibly you have something similar" and she said, "No, I don't", and then she said "Well, we will see about it."

Now, she didn't say that in an ugly way, but to indicate that this writing was not going to be quite final, that Mr. and Mrs. Bird wouldn't have the complete charge --

MR. LASKEY: I object to the witness volunteering.

THE COURT: You should object more seasonably.

MR. LASKEY: Very well, Your Honor.

BY MR. LEEMAN:

Q. This was given to you in what year? A. January 1955.

Q. I will ask you whether or not that entire paper is in the handwriting of Mrs. Jeffords. A. Yes --

MR. LASKEY: Object; it is repetitious.

1055

THE COURT: Overruled.

MR. LEEMAN: I don't think I asked her that before.

THE WITNESS: Yes.

BY MR. LEEMAN:

Q. Is that in the handwriting of Mrs. Jeffords? A. Yes, it is her writing; her signature.

MR. LEEMAN: You may examine.

MR. LASKEY: No questions.

THE COURT: Stand down, Mrs. Bird. Take a seat in the court room.

EXCERPTS FROM DEPOSITION OF WRAY ROCHAMBEAU

1

Washington, D.C.
Wednesday, Nov. 16, 1960.

* * * * *

2

WRAY ROCHAMBEAU

called as a witness by counsel for defendant, and having been first duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. SULLIVAN:

Q. May I have your full name and home address, please? A. Mine? Wray Rochambeau.

Q. Do you want to spell it for the young lady? A. W-r-a-y, R-o-c-h-a-m-b-e-a-u.

Q. And where do you live, Mrs. Rochambeau? A. 2745, 29th Street, Northwest.

Q. And what is your profession? A. Nurse.

Q. Directing your attention to October, 1959, did you have occasion to seek or find employment with Mrs. Laura Jeffords? A. I nursed Mrs. Jeffords, yes.

Q. And from your own recollection? A. I think I went on the case on October 14th, I believe that was.

3 Q. And what shift were you working? A. I worked -- yes, I went on duty October 14th, 1959. I was released November 6th, 1959.

Q. And what was the condition of Mrs. Jeffords when you first went there? A. Mrs. Jeffords was in a critical condition with a cardiac and she had had a stroke and she had paralysis in her right side.

Q. Now initially was she able to talk to any extent? A. She could talk, yes, but you had to pay strict attention to her to try to make out what she was saying.

Q. Now what was her mental condition with regard to current matters? I mean was she able to answer current problems? A. No. I would say no.

Q. How about deep matters requiring some thinking or some thought? Was she able to answer those at all? A. Well sometimes she was and other times she wasn't.

Q. Now what was the treatment the doctor was prescribing for the patient? A. Well stimulation and some vitamins. She had stimulation for the arteries and stimulation for the heart.

Q. What type of stimulants were used? A. A heart stimulant and then for the arteries -- I can get you the name of them.

4 I have to go back to my chart.

Q. That is all right. A. I have been sick myself.

Aminophyllin tablets for the arteries, three grain tablets. She got one tablet and then the peritrate was for the heart.

She got a half a tablet for that.

Q. How often were these two tablets administered to her? A. I think she got that at four hours. No, that was twice a day.

Q. Twice a day.

Was there any narcotic or opiates given to her? A. I never gave her any. There wasn't any prescribed for her.

Q. Was Mrs. Jeffords able to get out of the bed? A. She was not able to handle herself in any way.

MR. GRAY: Was this limited to any particular time?

THE WITNESS: Beg your pardon?

BY MR. SULLIVAN:

Q. Is it limited to any particular time or was that the entire time you were there? A. No, she couldn't handle herself at all.

5 Q. Now did the doctor or did you on the doctor's suggestion ever try to assist her in getting out of bed? A. The doctor wanted me to walk her. I attempted that and I had to drag her and I told him I could no longer attempt that, just couldn't make it, and so on -- I took her into the -- let's see. What date was that.

On the 18th, at 1:30, it was on a Sunday, she had a -- I took her to the bathroom. I had to practically carry her. She was in the adjoining room and she had a stroke while on the commode. So we got her

into bed. We had to call for help. Mrs. Bird got a man from the street who happened to be a policeman in civilian clothes and he came in and picked her up and put her in her bed. She lost all control and she was completely then paralyzed on the right side.

Q. Now after this, as long as you were with her nursing, did she ever get out of bed again? A. Did she ever what?

Q. Did you ever get her out of bed again? A. No. I absolutely refused to get her out of bed because she was in no condition. She was completely paralyzed from the face down to her toes.

Q. On the right side? A. On the right side.

Q. Now this was the 18th, and that was October, 1959? A. That is right.

Q. All right. Now directing your attention to earlier that same
6 week, had there been some discussion concerning a power of attorney? A. Yes.

Well, I saw that there wasn't going to be any pay for me and I had been through that quite a lot so I told her she would have to give someone power of attorney.

Q. And did someone around the house request the power be given to them? A. Yes. Mrs. McCord asked her if she would let her have power of attorney and she answered absolutely no.

Q. And subsequently was a power of attorney prepared? A. Yes, it was.

Q. Did you witness the power of attorney? A. I did.

Q. I show you the original power of attorney dated October 16, 1959 and ask you if that is your signature on that? A. Yes, That is my signature.

Q. All right.

I would like to have this marked as Defendant's Exhibit 1 and offered into evidence at this time.

(The power of attorney referred to was marked Defendant's Exhibit No. 1 for identification.)

MR. GRAY: You have offered this in evidence. I don't believe the witness has testified as to the discussion of it.

7 BY MR. SULLIVAN:

Q. Mrs. Rochambeau, did you see the other persons whose signatures are thereto affixed sign this paper? A. Yes.

Q. Did you see Mrs. Jeffords sign it? A. I saw her. She made many, many attempts to sign it and I think that she finally was helped, was able to scratch that on.

Q. All right. Did you see Mr. Sifdol sign it? A. Yes.

Q. Do you from your own --

MR. GRAY: I object to the admission.

BY MR. SULLIVAN:

Q. Do you from your own knowledge know who prepared this statement? A. Well, I will tell you, I wrote -- I don't know whether I wrote it word for word but in longhand. No, no.

Yes. I wrote it in longhand and then she -- then she -- then Mr. Sifdol typed it.

Q. During the time -- were the words yours or did Mrs. Jeffords assist with them? A. They were all her words.

Q. Oh, they were her words? A. All her words.

8 Q. And you just wrote it out for her? A. Wrote it out. That was her request. All her words. And it was read over to her several times. And Mr. Sifdol read it over before he typed it.

Q. Now at the time this was prepared and dictated by Mrs. Jeffords and later typed and signed, was Mr. Bird in the house or in the bedroom, if you recall? A. At that particular time?

Q. That she signed this. A. I can't answer that.

Q. You don't know. All right.

MR. GRAY: She didn't say she didn't know. She said she couldn't answer.

THE WITNESS: No, I don't know.

BY MR. SULLIVAN:

Q. Do you remember whether or not he was in the room at the

time it was signed, if you remember? A. I don't.

Q. All right.

When was it that Mrs. McCord had requested the power of attorney being given to her and she was refused by Mrs. Jeffords with reference to this on October 16th? A. Well I believe that it was the day of the signing of the -- that Mrs. Sobel came over from the bank.

Was it that day or the day after that that she came in the room and just the time element, I can't say. I can't tell you that.

9 Q. Now with regard to the prescriptions which were being sent to

the door by the drug stores, was there any difficulty in getting those? A. Yes. I was down in the kitchen getting something for my patient when I came through to go upstairs and Miss Ellie was refusing to take the medicine from the messenger boy from the drug store and I went and asked him, I said what is this, and she said I won't take it, it's too much. I won't pay for it. I said well I'll pay for it. We have to have it. It is the doctor's prescription.

So I went and got the money and paid for it.

Q. That was Ellie Gill, was it? A. Yes.

Q. Now was it after this that you discussed with Mrs. Jeffords the necessity of having someone with the power of attorney? A. Oh, yes.

Q. Now subsequently were arrangements made so that prescriptions were paid for? A. Yes, so that everything could be paid for.

Q. Now do you know what arrangements were made concerning prescriptions? Was there money there or what? A. Well, we didn't have to have many prescriptions, but they were all paid for. I don't know just exactly how that money came through, but it was there, they

10 were paid for.

Q. That was in cash, petty cash available? A. That is right.

Q. Now did you have some discussion with someone concerning the care of the patient, that is, Mrs. Jeffords, and the prevention of bed sores which sometimes follow in those cases? A. Yes. I asked

-- that was a great fear that the doctor had of her getting a bed sore, and I told him, I said well I have never had a patient get a bed sore. He said well always a first time. Well I requested that I have some cotton blankets and slip them down and make two sheets out of them for draw sheets, which they are soft, and she was such a delicate little thing and I was refused. They said they just wouldn't get them.

So I made the remark to one of them, I said if you get them, I will make them because she needs them because if you have experience with laundry sheets, they have to put things in them to sterilize them and that causes abrasions.

Q. Who refused to get them for you? A. Mrs. McCord.

Q. Now was this after the signing of the power of attorney? A.

I don't remember that.

11 Q. What, if anything, did you do to try to prevent the acquisition of the bed sores? A. Well I kept her in a bed of powder, which I always do with those patients and they said the powder was costing too much. I kept her well powdered because a lot of urine was involuntary and I had to change her repeatedly and I always bathed her each time and powdered her and so they finally, they got an old blanket from somewhere, but it was brown and it was just hairy and they said they would split that and they said I could use that for draw sheets.

Q. Was that a cotton blanket as you had requested? A. No, no. They never did get the cotton blanket.

Q. What was this blanket made out of? A. It was made out of wool and it was just as rough as it could possibly be. I had never seen anything like it before. I don't know where they got it.

Q. Who is the "they" who got you this blanket? A. Mrs. McCord was the one in charge and Mrs. Flemming, Mrs. May Flemming.

MR. GRAY: Just a minute, Mr. Sullivan. The witness has referred from time to time to some papers or documents which she has in her possession.

I would like to have them marked by the stenographer for identification purposes.

BY MR. SULLIVAN:

12 Q. Would you tell us what the papers are that you have referred to there? A. The which?

Q. The papers that you have referred to there, what are they?
A. Oh, this is my chart. This was Mrs. Flemming's telephone number on the back of it I had written down. There were so many people I didn't try to remember the names.

Q. This was a chart that you kept every hour by the hour? A. This was my chart that I kept, yes.

Q. And I mean it is kept regularly on patients you are attending?
A. I never take a patient without a chart.

MR. GRAY: I would like to have it identified for the record and have it marked by the stenographer.

MR. SULLIVAN: How do you want it marked?

MR. GRAY: The chart that she has referred to so that we will know what it is.

MR. SULLIVAN: All right. I guess mark it Rochambeau chart.

THE WITNESS: Beg your pardon?

MR. SULLIVAN: I was inquiring how Mr. Gray wanted it marked so in case it comes up again there will be a mark on it.

13 MR. GRAY: You might take from the first page, Bedside Chart, Mrs. Tracy Jeffords.

MR. SULLIVAN: Count the pages that are marked.

THE WITNESS: They are not numbered. You will have to count them.

MR. GRAY: I was looking for the date.

October 14, is that the first date?

THE WITNESS: That is right.

MR. GRAY: Through November 6, 1959.

(The Bedside Chart, Mrs. Tracy Jeffords, was marked as 'Rochambeau Chart' for identification, remains in custody of counsel or deponent.)

BY MR. SULLIVAN:

Q. Mrs. Rochambeau, is that book entirely in your handwriting?

A. Yes, except on this page here, the next to the last. It isn't signed by her, but Mrs. Wilhite, Mary Wilhite who came on, Mrs. McCord brought her in as a night nurse.

You can see that lower part there.

Q. Does it have any other handwriting in it other than yours?

A. Not other than the doctor's.

Q. In other words, the instructions? A. His orders.

Q. His orders.

And are they signed by Dr. Richwine? A. Oh, yes. His initials there. This was an order given to me over the phone which I recorded
14 on doctor's orders. He had been taking her pulse.

Q. How did he take her pulse, Mrs. Rochambeau? A. Stethoscope, because her pulse was very weak. There were times when you couldn't get it.

Q. There were times when you couldn't even get it on the stethoscope? A. Oh, he could always get it on the stethoscope, but it was weak that you couldn't get it through the wrist or any other pulse. You couldn't get it by the pulse. It had to come through the stethoscope.

Q. Now what was Dr. Richwine prescribing for her there? A. That is all he prescribed, the peritrate and the aminophyllin. The aminophyllin was one to clear, you know, the channels and her arteries were swollen quite badly.

Q. Was there any digitalis ordered for Mrs. -- A. The last day that I was on duty, he prescribed digitalis. I administered one tablet. It came in tablet form.

And that time he couldn't get her pulse. He had to take it by the apex.

Q. Were you ever in the room when Mrs. McCord came in to visit with Mrs. Jeffords? A. When she did what?

15 Q. When she came in to visit? A. Oh, yes.

Q. Did you ever hear Mrs. McCord cry the blues, so to speak, about money to Mrs. Jeffords? A. Yes, I did. I saw her weep over it.

Q. And what, if any, response did Mrs. Jeffords make to her? A. Mrs. Jeffords just looked away and it was too bad. It was over a house that they had bought and they were left out without them having any money and she said, now we have lost the house that we are supposed to sell and now she said we don't have this one. There was something in the title office. I can't explain it to you. I don't know. But she was terribly wrought up and I think she was down there two or three days at the title office trying to get it straightened out.

Q. And she brought these problems on? A. She did. She brought them and I asked Mrs. McCord several times not to bring anything unpleasant to Mrs. Jeffords but it didn't do any good.

Q. Were you ever present at the time when Mrs. Jeffords ever gave Mrs. McCord anything? A. Yes, I was present when she gave her -- and that was during this house problem that Mrs. McCord had. She gave her a necklace and told her to put it on. In fact, she took it
16 off of her own neck and put it on, and handed it to her.

Q. That was a little piece with a couple of little diamonds in it? A. Yes.

Q. Now, Mrs. Jeffords carried a little cloth bag on her bosom sewed into her shirts. Did you ever see the contents of that bag? A. No, I never did, because when I changed that, which she fought me as hard as she could fight me to keep me from changing, but it had to be changed, she took her left hand and put the contents in herself. I don't know what it was. I did see there was some greenbacks. How much, I could never tell you. I don't know what was in it.

Q. Did you ever have occasion, Mrs. Rochambeau, to go into the dresser for anything? A. The only things that I would go in the dresser for would be to get her nighties.

Q. Did you ever see any money or bonds or stock certificates? A. No, I never saw any bonds and there was little change in the top drawer and in the right-hand top drawer which was where I had gone

out and got some groceries which my patient needed. Prior to this Mrs. McCord come in and told her she was going to write up her menus and I said no you are not going to write them as long as I am on duty.

17 I am taking care of her food myself. And so she wasn't very much pleased about that, but she went on and so after she left I said to Mrs. McCord, I said "Mrs. McCord, let me go down and get some things from the store," and she always took a nap in the afternoon. I said it is soon time for your nap. While you are resting I will have the maid come up here and sit with you while I go and get the groceries. So she said well there is money there in the top drawer and she said you take from that and get what you need.

MR. GRAY: You said, as I understand, this was relating to a conversation with Mrs. McCord. I think you meant Mrs. Jefford. Excuse me for interrupting.

THE WITNESS: Yes. Mrs. Jeffords. I am sorry.

BY MR. SULLIVAN:

Q. I see. I was going to catch it. A. You straightened me out on that.

Q. After the 18th of October, when Mrs. Jeffords had the stroke on the commode, what was her condition thereafter? Did her pulse improve? A. No, there was never any improvement on the pulse.

Q. How about the paralysis on the right side? A. Well I massaged with her and worked with her. I ordered a hospital bed which I had to have on account of her breathing. She couldn't get her breath and where we could have her elevated and then the foot of it, to take the
18 pressure off her heart and which was gotten. The bed was gotten, and I got a vibrator, an electric vibrator and I gave her professional treatments with that, and I got it, where she could take the right hand and put a little pellet in her mouth and I had her sitting on the side of the bed with her feet dangling for just a few minutes each day, towards the last couple of times during the day. I would exercise her and then I gave her exercises when I got through massaging her. I really worked toillessly with her.

Q. As a result of this effort on your part, was Mrs. Jeffords able to carry on a sustained conversation? A. Well, she regained her speech but she lisped quite a bit.

Q. Did she -- A. She lisped but she could talk.

Q. Could she talk for any period of time? A. No. She tired very quickly.

Q. Could you give me a time on that? Would she talk as much as two minutes before she tired or five or ten or twenty? A. Oh, no. No. Maybe a couple of minutes. Just a sentence. That was all.

Q. Now during this period did Mrs. McCord persist in coming to visit? A. Yes, she never stopped. She insisted on coming.

19 Q. Did you request of Mrs. McCord -- A. She didn't pay attention to me at all.

Q. And on or about the 6th of the month you terminated there? A. Yes. She had brought this woman in to take care of her at night. Well, I wasn't at all pleased with the way she was working. I said I wouldn't work with her and I relieved myself from it.

Q. Did you know another nurse there, a young lady who went by the name of Penny Timmons? A. Oh, yes.

Q. Did she work nights during the period you were there? A. Yes.

Q. Do you know how Penny Timmons got there? A. Mrs. McCord brought her there through the doctor, I understood.

Q. Did you ever see Miss Timmons when her condition showed that she may have been using some narcotic? A. Yes, I saw her.

MR. GRAY: I object to the question. It is a leading question.

BY MR. SULLIVAN:

Q. Did you see her when she was other than normal? A. Yes. I certainly did.

20 Q. As a result of your knowledge of medicine and so forth, did you conclude what could be wrong?

MR. GRAY: I object to the question. The witness hasn't testified she has any knowledge about medicine.

BY MR. SULLIVAN:

Q. How long have you been around the medical field? A. I graduated in 1913.

Q. And you have been a registered nurse ever since? A. That is right.

Q. Have you been working at nursing most of these years? A. Yes.

Q. Have you seen people under the influence of narcotics? A. Yes.

Q. Did you conclude as a result of what you saw of Miss Penny Timmons what she may be taking or what her condition was? A. Well, all I can say is that her eyes were swollen badly, her lips were swollen, her tongue was thick and she couldn't walk.

Q. Did Miss Timmons ever inquire of you or try to get from you any narcotic? A. Yes. She asked me to let her have some seconal.

Q. That is a synthetic drug, is it? A. It is an opiate.

21 Q. Particularly with reference to the need for an acquisition of the hospital bed and medicines, was it ever made known to you by Mrs. McCord or by Mrs. Jeffords that Mrs. McCord had any funds to take care of those matters? A. Well, the hospital bed was gotten after the power of attorney was given. That is how the bed was paid for.

Q. But before that, did Mrs. McCord know of the urgent need for equipment and bills of Mrs. Jeffords? A. Why, yes.

* * * * *

EXAMINATION BY COUNSEL FOR PLAINTIFF

BY MR. GRAY:

Q. It is Mrs., is it, Mrs. Rochambeau? A. Yes.

Q. You are a registered nurse? A. Yes.

Q. In the District of Columbia? A. I am not licensed in the District of Columbia because I am registered in Maryland and I have operated my own nursing home in Maryland and I didn't see any reason to pay that extra fee. I operated for twenty years in my own home.

Q. Are you authorized to act as a registered nurse in the District

of Columbia? A. Yes. When you are once registered in your state --
 22 I am registered in Pennsylvania, and in 1918 I took the registration in the State of Maryland. So then that can never be taken from you unless you commit a felony.

I do private duty so that doesn't worry. I don't like hospital work so that doesn't worry me at all.

Q. Now you came to work for Mrs. Jeffords on what day was it?

A. On the 14th of October, 1959. I left on November 6, 1959.

Q. May I see your chart, please? A. Yes.

Q. Now Mrs. Rochambeau, you testified that when you first came to work for Mrs. Jeffords her mental condition was not good. What do you mean by that? A. Well, you could try to talk to her and her conversation would waver off. Sometimes she was coherent and sometimes she wasn't.

Q. Well, is that because of some physical impairment? A. She had had a stroke before I went on the case and it was due to that stroke.

Q. Well, was this a mental condition then or a physical impairment of her speech? A. Well, no, it was mental and both.

Q. Did she make her wants known to you? A. In a way. Answer-
 23 ing that, a nurse is trained to read their patients and see, administer to them without them asking.

Q. Was she of unsound mind? A. I wouldn't say that she was of an unsound mind. Let's say it was more along senility.

Q. Was she of unsound mind any time you were there working from the 14th of October until the 6th of November? A. Well, I don't think at any time that there could be really much intelligence brought out with her.

Q. Well now, on the 14th of October, 1959, in your chart, you have a notation that she "sit in chair for half hour, walk for ten minutes. Very unsteady on her feet." A. You had to practically carry her.

Q. You have a further notation: "Complains of stoppage in throat."

How did she make that known to you? A. Well, of course with

the heart, when her heart would act really badly, why it swells up in your throat and in the chest.

Q. I know that but your notation is "complains of stoppage in throat." How did she complain of that? A. Well, there are many ways of complaining that if you are alert in reaching up to the throat and it hurts without causing a conversation, you know.

24 Q. Can you tell now whether this was communicated to you by a way of conversation? A. If I could see the chart prior to that.

You see, our charts are only to be read by the doctor and he understands. We have a language of our own.

* * * * *

Q. Now on the same day you have a notation: "Ate good dinner and enjoyed it."

How do you know she enjoyed it? A. Well, you can tell from the expression and the way she ate.

Q. Could this have been communicated to you verbally? A. No, no. She never bothered about that but you can always tell when they enjoy and when they don't.

Q. The last notation on that date, "Patient is greatly improved this evening. Stronger and more steady on feet." A. Well, that is very possible.

25 Q. Now on the 15th of October, 1959, the first notation is in quotations, "A good night reported. Slept well." A. That was from the night nurse. I believe I had written down there who it was, didn't I?

Q. It doesn't say. A. Well, it was from the night nurse. That was Miss Timmons. She didn't keep any record, and again that was written down there only for the doctor.

Q. On the same day the notation: Walking unsteady. A. Well, there was no time she could walk alone.

Q. But she was out of bed and attempting to walk or you were attempting to help her, is that correct? A. Well, that was before we got the hospital bed, yes.

Q. The next notation is "Mentally clear."

What do you mean by that? A. Well, periodically she could.

Q. Was that so the whole time you were there? A. No.

Q. Well, what do you mean by periodically, Mrs. Rochambeau?

A. Well, along that time. Again I will say that that record was only for the physician to read and myself.

Q. Now on the 16th of October, the notation appears: "Walking," and there is a little symbol, followed by "More assurance."

26 What did that mean? A. Let me see that, please.

That was on the 16th, you say?

Q. Yes, ma'am.

What does the symbol after "walking" mean? A. Well, on the 16th -- I don't see.

Oh, that symbol is "with" -- walking with more assurance.

Q. What did you mean by that? A. Well, it no doubt was, as I recall it, of a more pleasant outlook.

Q. How would that happen? A. At that particular time.

Q. How would that have been communicated to you? A. Through her facial expressions.

Q. Did she speak to you at any time those first three days? A. The first three days that I was there?

Q. The first three days that we have talked about. A. Oh, yes.

Q. Did you understand what she said? A. Sometimes I could and sometimes I couldn't because part of her face was paralyzed.

Q. Now on the 17th is the notation "Mental attitude greatly improved." What do you mean by that? A. Well, now that could -- what
27 would her attitude be greatly improved? It would be the entire --

MR. SULLIVAN: At the request of Mrs. Rochambeau, she is feeling rather poorly, which I think is an understatement, she requests that the matter be suspended.

* * * * *

Deposition of WRAY ROCHAMBEAU (Cont'd)

1

Washington, D.C.
Thursday, Jan. 26, 1961

* * * * *

2

[BY MR. GRAY:]

Q. Now the last question, just to refresh your recollection, Mrs. Rochambeau, was about notations made by you on your bedside chart on October 17, 1959, and I ask you the question now, on the 17th this is the notation, "Mental attitude greatly improved," and the question was, "What do you mean by that?", and your answer was, "Well now, that could -- what would her attitude be greatly improved? It would be the entire --" and at that point we stopped the deposition.

Now I will ask you that same question again. Your notation shows

3

"Mental attitude greatly improved."

What did you mean by that, Mrs. Rochambeau? A. Well, her mental attitude sometimes would be greatly improved and then maybe in the next ten minutes it would be off again.

Q. What did you mean by her attitude? A. Well, the attitude that would be expressed, facial expressions and so forth.

You take a patient like that, you have to take a great deal into consideration individually.

Q. Now, Mrs. Rochambeau, you testified that Mrs. Jeffords collapsed on the commode on the 18th of October, 1959, and you testified that she suffered a stroke.

Do you recall that? A. Well, that is what the doctor said it was.

Q. Now, what doctor was that? A. Oh, Doctor -- oh, what is the name on that chart there?

Q. Richwine. A. Richwine. That is the only doctor she had when I was on duty.

Q. Now, I will show you your bedside chart and refer you to October 18, 1959, and ask you if there is any notation on there to the effect that Mrs. Jeffords had a stroke? A. Well, there is only one

4 thing that, you know, when paralysis sets in, that is only one thing that causes paralysis.

Q. No, my question was whether there was any notation on the chart that day which would indicate that she had a stroke on that day?

A. I don't know what is on there.

Q. Well, would you look at it? A. Yes.

I haven't looked at this chart since then. It says here the right side was useless copious emesis, bowels out of control, liquid stool.

Well, what else did you want to know?

Q. All I wanted to know is if there is any notation on the chart that day which indicates she had a stroke on that date? A. Well, you know a nurse never puts that down. The doctor does.

Q. All right. May I have the chart back? A. Yes.

You see, a nurse is not supposed to. That is what the doctor is supposed to do. If she could do this, she would not need a doctor.

Q. Now, you testified on direct examination that following this episode on the 18th of October that Mrs. Jeffords did not thereafter get out of bed.

* * * * *

5 Now, Mrs. Rochambeau, on page 5 of your deposition, on direct examination in response to a question, "Did you ever get her out of bed again?" Your answer was, "No, I absolutely refused to get her out of bed again because she was in no condition. She was completely paralysed from her face down to her toes.

"On the right side?

"Answer: On the right side."

Now, I will show you your chart for October 22 and ask you to look at the notation there which says, "Sit up in chair," and there is a notation behind that that I can't read.

Is that in your writing, Mrs. Rochambeau? A. Whereabout?

Q. It is right here (indicating).

Would you tell us what that is, please? A. "Sit up in chair one hour. Respiration is heavy and difficult."

Q. She had to get out of bed to get into the chair, is that correct?

A. She was a tiny little thing. She didn't have to get out of bed. I could lift her around.

Q. What I mean by that was she was removed from the bed and placed in a chair, is that correct? A. Oh, yes.

6 Q. And you did it, is that probably the situation? A. Yes, because she couldn't stand.

Q. Now, on the 23rd of October, 1959, there is a notation: "Complains of being warm."

How did she make that known to you? A. When she complained of being warm?

Q. Yes. A. When was that?

Q. On the 23rd. Would you like to look at the notation? A. I will have to.

Q. Just below where my finger is. A. Well, there are many ways. I don't know how she gave that to me because there are many ways that they could tell you that they are warm.

Q. Could she have spoken this to you orally? A. I don't know what she did. It has been a long time. I don't know whether she did audibly or not. I don't know that. There are many signs that they are warm and perspiration could have broken out. I could have seen that. I watched her very closely.

Q. On October 28, 1959, is the notation, "Did not sleep any during day but expressed joy."

7 Can you tell me how she expressed joy? A. Well, she was a happy little thing most of the time.

Q. Was she able to talk with you? A. Well, she could express joy in her facial expression and many ways that we can express joy.

She was naturally a happy little person.

Q. Now, after she had this episode on the 18th of October, she was out of bed at least on one occasion, as to which I asked you some questions. Now, didn't she thereafter also sit up on the side of the bed

sometime? A. Oh, I got her up on the side of the bed when she could, and I exercised her and her legs, and she was given massages, several during the day, in order to promote activity in her muscles, and finally got her where she could lift a pellet and put it in her mouth.

Q. Would that account for this notation on November 5, 1959? Would you read that? A. "Picked up tablet and put it in her mouth with right hand." That was the one that had been paralyzed.

Q. On the 30th of October, Mrs. Rochambeau, is the notation, "Dizzy when first sit up. Fair day."

How did you know she was dizzy? A. All you need to do is look in their eyes.

Q. Could she have told you she was dizzy? A. No.

Q. She could not have told you? A. I don't know whether she
8 could have told me or not, I don't know that, but you can always tell from their facial expression and their eyes the effect it has on them.

Q. Now, on the 29th of October, 1959, is the notation, "Can grasp bottle with right hand and raise it up." A. That was part of her physical therapy.

Q. You were working with her and it was showing improvement? A. That is right.

Q. Now, on the 5th and 16th of November, 1959 are some notations which appear to be in a handwriting other than your own. Can you tell us whose that is, in the right hand corner of that page? A. That would have to be the nurse that came in there. You see, she didn't sign it.

Q. But that was not your handwriting? A. No, that is not my handwriting.

Q. Let's have the reporter mark that so that we will know.

Circle the handwriting that Mrs. Rochambeau has indicated was not hers but was probably that of the nurse who followed her on duty, is that correct? A. Yes, it would have to be.

MR. GRAY: And initial it.

(The reporter followed the instructions as requested.)

9

BY MR. GRAY:

Q. I would like to have this record marked by Mrs. Rochambeau to show in some manner which is in her handwriting and which is in the handwriting of others so that that there would be no question about it later on -- A. I think it is all mine except in the latter part of that chart.

Q. There at the bottom of some of the pages, I see some notes with the initials of "A" something or other "R" which I assume is Dr. Richwine? A. That is a doctor because he and I were the only ones that used that chart except the last one or two nights that they had somebody else in there and that was clear at the end of the chart.

Q. Well, let's put it this way: this record of bedside chart record from October 14, 1959 through November 6, 1959, is entirely in your handwriting, except on the bottom of the first page, which is October 14, 1955, some notes initialed "AR." A. Dr. Richwine.

Q. And that is Dr. Richwine's notation? A. Yes.

Q. Except, also, on the page where October 31, 1959 appears, there also appear to be some notes with the same initials and -- A.

10 That is Dr. Richwine.

Q. That is Dr. Richwine? A. That is right.

Q. And except for the notations on the page covering November 5 and 6, 1959, where the reporter has outlined in red and initialed some notes made by somebody other than yourself? A. That is right.

Q. And except on the last page which is for November 6, 1959, at the bottom of which is a note with the initials of "AHR?" A. That is Dr. Richwine.

* * * * *

11 Q. Now, Mrs. Rochambeau, you testified on direct examination about a power of attorney which Mrs. Jeffords executed.

Do you remember that? A. Yes.

Q. And you had testified that there had been some discussion -- and this was just before the 18th of October, concerning a power of attorney. Isn't it a fact that you initiated those discussions, Mrs. Rochambeau, because you were somewhat concerned about being paid?

A. Yes. I asked Mrs. Jeffords -- I didn't ask her. I told her that someone would have to have power of attorney, that in the condition she was in, should she pass on, to be able to take care of things and someone that could pay me because she couldn't write.

Q. What did she say to that, Mrs. Rochambeau? A. She was very agreeable to it.

Q. She understood what you were saying to her? A. She knew. It was agreeable to her and she agreed it should be done.

12 Q. Did you have any discussion with her about who should be given the power of attorney? A. Oh, no.

Q. You didn't discuss that with her at all? A. That was none of my business.

Q. It may well not have been but Mrs. Jeffords might have said something to you about it. A. No, because she was a woman that had a mind of her own. No, I never would do that with a patient.

Q. Now, you testified on direct examination that Mrs. McCord asked Mrs. Jeffords to be given the power of attorney, is that correct? A. She asked her to give her the power of attorney.

Q. When was this? A. Well, that was the date that -- I think it was the day that the bank had come over. I don't remember right now.

But, however, she come in the room while I was there and she asked her to let her have -- that was when the talk was about the power of attorney, about getting one, and she come in and asked her if she would give her the power of attorney. Mrs. Jeffords quickly said no.

Q. Well, did Mrs. Jeffords say who she wanted to name in the power of attorney? A. She just walked out.

13 Q. Mrs. Jeffords walked out? A. No, no. Mrs. McCord just turned and walked out of the room.

Q. You are quite sure it happened that way? A. I am sure.

Q. Now, there was a power of attorney prepared and executed in your presence, was there not? A. That is right.

Q. Who -- A. By Mrs. Jeffords' desire, and she asked me to help her with that.

Q. Now, did she tell you who to name as the attorney in fact in that power of attorney? A. Oh, I believe that she did say that she wanted Mr. Bird.

Q. Did you -- excuse me. A. That she wanted him to take care of her affairs.

Q. Now, was that a typewritten or handwritten power of attorney? A. Well, there was a roomer there that he typed it up and I wrote down just exactly what she asked me to write down.

Q. She told you what she wanted in it? A. That is right. And then he typed it and there were some changes made in the typing and the legal writing.

Q. Were those changes made as a result of something Mrs. Jeffords said about it or suggested? A. No. He said that it would sound
14 better if the changes were made and he just went ahead automatically and made them.

* * * * *

Q. And the content of that power of attorney was prepared from instructions given to you by Mrs. Jeffords, is that correct? A. That is right.

Q. Now, did Mrs. McCord request this power of attorney before or after this particular power of attorney was executed, Mrs. Rochambeau, if you remember? A. Right now, I can't tell you. I
15 wouldn't want to say.

Q. Now, Mrs. Rochambeau, you testified about the concern that was expressed that Mrs. Jeffords might have some bedsores, and you testified that you requested that some cotton blankets be obtained. Was that as a result of any orders given by the doctor? A. No. That is the nurse's job.

Q. Well -- A. All prophylactic measures is the nurse's job.

Q. Did you say anything to the doctor about it? A. Oh, he examined her every time he came in. That was the first thing he examined. He was fearful of her getting bedsores.

Q. Well, did he suggest any measures to be taken? A. No, no. To keep her clean, and to be careful with her, see that she didn't get any.

Q. Now, who did you make this request of? A. I asked Mrs. McCord to get me some cotton flannelette blankets that I could make some draw sheets so they would not rub her. She had a very, very delicate little skin. She was very tender.

Q. What did Mrs. McCord say? A. She wouldn't do it. They brought in a couple --

16 Q. Just what did she say, if you recall? A. Well, she brought in --

Q. What did she say when you requested the blankets, the cotton blankets? Did she say she wouldn't get anything or she would get something? Just what did she say, if you recall? A. She brought in --

Q. No, what did she say? Then we can talk about what she brought. A. I don't know as to what she said when I asked her. She was very evasive. But they brought in just, oh, stiff, awful looking blankets.

Q. You said on direct examination that you were refused and then you said, "They said they just wouldn't get them." Now, who was "they?" A. That was Mrs. -- it is on the back of that chart there. Mrs. Fleming and Mrs. McCord.

Q. Both Mrs. Fleming and Mrs. McCord said they wouldn't get cotton blankets? A. That is right, and they didn't get them.

They did bring in these rough things and I wouldn't use them.

Q. A blanket was brought? A. Yes, they were horse blankets.

Q. Who brought them? A. I don't know which, Mrs. Fleming or Mrs. McCord brought them.

17 Q. You don't know? A. I don't know because Mrs. Fleming stayed there all night and in the morning there were the blankets.

Q. This was in the morning after you made your initial request, is that right? A. I don't know whether it was the morning after or a couple of mornings thereafter.

Q. It was shortly thereafter you made the request? A. Yes.

Q. And some blankets were brought? A. Yes. They were regular horse blankets. I have never seen anything like it.

Q. Would you describe a horse blanket for me, please? A. Yes. It is something that is extremely rough, hairy.

Q. Do you remember the color of this or these blankets? A. Yes. They were dark brown. They were awful looking. She had a baby doll skin. It was just as tender as it could be.

Q. Well, did you use those blankets? A. No, I certainly didn't. I wouldn't put them on.

Q. What did you do with them? A. Handed them back to -- I don't know which one took them. They were both there.

18 Q. You are not sure whether it was Mrs. McCord or Mrs. Fleming who brought them, are you? A. I don't know where they came from.

* * * * *

Q. Now, Mrs. Rochambeau, you said earlier in your direct examination that you were present when Mrs. Jeffords gave Mrs. McCord a necklace, do you remember that? A. Yes, I do.

Q. Would you tell us what Mrs. Jeffords said at that time? A. She had it on herself and she took it off her own neck and she told her, she said, "I want you to have this," and she said, "Put it on." Of course, it was terribly dirty and Mrs. McCord hesitated and she said she would clean it up and was very gracious about it and thanked her.

Q. Do you recall when this was, Mrs. Rochambeau? A. No. I can't tell you what day it was.

Q. Was it toward the beginning of your service on this case or toward the end? A. No, it was the end, towards the last part.

Q. You also testified, Mrs. Rochambeau, that a question came up about getting money for groceries. You testified that Mrs. Jeffords
19 said there was money in the top drawer of the dresser. A. Yes. She said that there was money there on the top of the little drawer, the right-hand side, because I was going down to get her some things that

she needed to have in the grocery store and she told me to get the money in there.

Q. Mrs. Jeffords told you? A. Yes.

Q. Do you remember about when that was? A. Yes. It was shortly before I left the case.

Q. Shortly before you left? A. Yes.

So I brought the change back and gave it to Mrs. Jeffords and she said drop it in that drawer, which I did.

Q. You worked hard on this case, and I believe you testified that Mrs. Jeffords' condition improved under therapy and that she was able to regain her speech, although she lisped some. That was correct, was it not? A. That was correct. She had gained a great deal. I warned her. I said, "Whatever you do, don't let anybody take you out of this bed. You can sit up here and get your exercises," but I said, "Don't let anybody get you out on the floor because your heart won't take it."

Sometimes you could get a pulse beat and sometimes you could not.
20 I was very particular about her diet and what she had.

Q. Now, there came a time when you had to get a hospital bed for her? A. That is marked in the chart, the day she was put in that.

Q. Who ordered that? A. I ordered it and Mr. Bird paid for it because she couldn't lie down. He had the power of attorney.

Q. Well, actually, the power of attorney was executed on October 16, 1959, which was just two days after you came on the case, isn't that correct? A. I don't know, but I know that he had -- well, maybe that was the fact.

Q. Well, you first came on the case on October 14, 1959?
A. Yes.

Q. And the power of attorney that I showed you a little while ago is dated October 16, 1959? A. Well, whatever it was.

We make these records and we put them back and that is the end of it.

Q. Now, why did you leave this case, Mrs. Rochambeau? A.
Well, do I have to answer that?

Q. I am trying to find in your direct examination, you said you
couldn't get along with some other nurse? A. It wasn't I couldn't get
21 along with her. I didn't like the way she worked.

Q. This was some other nurse? A. This was the nurse that
you saw that writing.

Q. Oh, yes. You couldn't get along. A. I didn't figure she was
a nurse.

Q. Was her name Wilhite? A. Wilhite.

Q. I will show you the last page of your chart and see if that will
refresh your recollection, Mrs. Rochambeau? A. That is just why I
wouldn't work with her -- Mary Wilhite.

Q. That is the reason. All right. Thank you. I have no further
questions.

* * * * *

1227

Washington, D.C.
Tuesday, October 1, 1963

Trial in above-entitled cause resumed before HONORABLE
DAVID A. PINE, United States District Judge, and a jury, at 10:00
o'clock a.m.

* * * * *

1228

JUDGE'S CHARGE TO JURY

THE COURT: (Pine, J.): Members of the Jury:

The taking of testimony has been completed and the summations of counsel have been concluded, and it now becomes my duty and responsibility to charge the jury, by which is meant to give the jury the principles of law applicable to this case.

This case involves numerous factual and legal complexities and has taken a long time to try, and I shall ask you to give me your undivided attention as I go along and endeavor to comprehend the principles of law which I shall attempt to explain to you.

This action now involves two general claims, a directed verdict having been entered so far as the third party claim against Mr. McCord is concerned, as I already have told you.

The two general claims are:

First, the claim by Mrs. McCord in her complaint against Mr. Bird and Mr. Keith as executors of the estate of Laura L. Jeffords, and Mr. Bird individually. And throughout, instead of calling the parties plaintiff or defendant which sometimes is confusing to jurors and lawyers and

1229 judges, I shall use their names and avoid that confusion.

And the second claim is the claim by the executors, in their counter-claim against Mrs. McCord, which involves five separate claims.

You will be required to render your verdict on each claim separately, and I shall give you a form of verdict before I am through, and I shall instruct you on each claim separately. But I shall first instruct you generally and then instruct you specifically as to each claim:

It is the duty of the judge at this stage of the trial to give the jury the principles of law applicable to the case. It is the duty of the jury to follow those principles of law and apply those principles to the facts as the jury finds them.

The jury has the duty to determine the facts, to find the facts. The jury is the sole and exclusive judge of the facts. I am the sole and exclusive judge of the law. Between us we constitute the court. You are the judges of the facts; I am the judge of the law; you are to take the law from me as I give it to you and apply it to the facts as you find them.

1230 In finding those facts, you look to one source only, namely, the evidence and inferences reasonably deducible from the evidence. You are not to guess and you are not to speculate and you are not to conjecture; however, in weighing and evaluating the testimony you may bring into play your experience in life and your common sense when you determine how much weight to give to the testimony of any particular witness.

Being the sole judges of the facts you are of necessity the sole judges of the credibility of the witnesses; that is, the amount of credit you will give to the testimony of each witness who has appeared before you. And in determining credibility you will take into account the manner and demeanor and conduct of the witnesses as they testified.

Whether they appeared to you to be truth-telling witnesses or otherwise, any bias or prejudice which any of the witnesses displayed which may have colored or distorted their testimony, their memory or lack of memory, their ability or lack of ability to see and hear the things about which they have testified, their ability or lack of ability to express to you through the medium of words what they have seen or heard, any interest in the outcome of the case and the relationship of the witnesses to the parties, because when witnesses have a deep personal interest in the outcome of a case, which is true of the parties, the temptation is
1231 strong to color and pervert the facts, and all those other factors which you as reasonable people take into account when you determine whether a statement under oath is true or untrue, or true or half true.

Two of the witnesses, as I recall it, -- Mrs. Rochambeau and Mrs. Souder, have testified by way of deposition because they were ill. Such testimony is entitled to the same consideration and the same judgment on your part in respect of its weight as the testimony of witnesses who have appeared personally before you, and you are not to discount the testimony because it came by way of deposition, although in their case you were unable to observe their demeanor and attitude on the witness stand.

This case involves feeling on both sides, strong feeling. You are not to have any feeling whatever because you are the fact-finders, and you are to approach your task and perform your task calmly, dispassionately, objectively, without any prejudice or sympathy, and solely with the desire to be fair and impartial.

You should give close consideration to the summations of counsel because they are designed to assist you in understanding the issues you are called upon to decide, but you should bear in mind that each
 1232 of the lawyers who addressed you is an advocate of his particular side, and consider his summations in the light of that advocacy. And if any statement that the lawyers made to you conflicts with your recollection, it is your recollection that governs and not theirs, because what they say to you is not evidence but only their recollection of evidence, and the evidence consists of what you have heard from the lips of witnesses who appeared before you, the exhibits, and the depositions, and nothing else.

I shall comment on the evidence not for the purpose of invading your function as fact-finders but for the purpose of assisting you in understanding the issues you are called upon to determine, and if in commenting on the evidence if I make a statement contrary to your recollection, it is your recollection that governs and not mine; because what I say to you is not evidence.

Now, I shall use the expression "preponderance of the evidence" frequently throughout my charge. Preponderance of the evidence means the greater weight of the evidence. It does not mean the greater number

of witnesses on one side or the other, but it means that state of the evidence which when it is put on the scales with that opposed to it, weighs more heavily than the other. It is the evidence which is more
 1233 convincing to your minds as jurors.

First I shall take up the first claim, namely, that of Mrs. McCord against the executors and Mr. Bird. She has sued the executors, who are Mr. Bird and Mr. Keith, and Mr. Bird individually. You will treat them jointly, but your verdict will be either for or against the executors and Mr. Bird. You will have to add his name because in one case he appears in his representative capacity; in the other case in his individual capacity. But whatever your verdict is on the first claim, it will be the same for the executors and Mr. Bird. You can't render a judgment for one and not for the other. You can't render a judgment against one and not against the other. They are to be considered together.

Now, Mrs. McCord's claim in this connection, briefly stated, is that Mrs. Jeffords in her lifetime and shortly before her death, made a gift to Mrs. McCord of a cedar chest and its contents, that in the cedar chest were certain securities, namely, certificates for 12 shares of Johns-Manville Corporation; 15 shares of Lanston Industries, Inc.; two shares of Sperry-Rand; 20 shares of Potomac Electric Power Company; 36 shares of American Telephone and Telegraph Company; a \$1,000 United States Series H Bond; and two \$100 income mortgage bonds of
 1234 the Fort Dodge, Des Moines and Southern Railway Company;

that shortly thereafter, and before Mrs. Jeffords' death, Mrs. McCord gave custody of these securities to Mr. Bird upon his representation that it was necessary that he take possession of them in order for the court to determine whether she was entitled to them;

that she has demanded that Mr. Bird and the executors return the securities to her but they have failed and refused to do so.

Now, that in brief is her claim.

The defendant executors, and Mr. Bird individually, have answered, denying Mrs. Jeffords made a gift of these securities to Mrs. McCord, and also asserting that at the time of the alleged gift, namely, on

December 19, 1959, a little less than a week before Mrs. Jeffords died, she was incapable of making a valid gift because of her physical and mental condition; that the securities were not in the cedar chest at the time it was taken into custody by Mrs. McCord; and were not delivered to or in Mrs. McCord's possession; and that defendant Bird did not receive the securities from Mrs. McCord.

1235 Defendants therefore contend that these securities are a part of the estate of Mrs. Jeffords and that plaintiff, that is, Mrs. McCord, is not entitled to them.

Now, the burden of proof rests upon Mrs. McCord to establish the essential elements of a gift by clear and convincing evidence, that these securities were delivered to her by a valid gift from Mrs. Jeffords. You, therefore, have before you three basic issues to determine in connection with Mrs. McCord's claim to these securities:

The first is whether Mrs. Jeffords was physically and mentally capable of making this gift on December 19, 1959 when Mrs. McCord came into possession of the cedar chest. If she was not, no valid gift was made, irrespective of what Mrs. Jeffords purported to do. If she was, you will then have to determine whether the essential elements of a gift of the cedar chest and its contents have been established.

So if you find they have not been established, no valid gift was made. If you find that these essential elements have been established in respect of the cedar chest and its contents, you will have to determine whether these securities were among the contents. If they were not, or were not intended to be included in the gift, then, of course, there was no gift of them.

1236 In answer to this last question, as to whether the securities were among the contents of the chest, determines whether they were delivered by Mrs. McCord to Bird, on which there is a direct conflict in the evidence; because, if they were in Mrs. McCord's possession, she must have delivered them to him, as Mr. Bird did at some time have possession of them for delivery to the executors, namely, Mr. Keith and himself; and if they were not in Mrs. McCord's possession,

he must have gotten them elsewhere and were therefore not made the subject of a gift to Mrs. McCord by Mrs. Jeffords.

Mrs. McCord made no list or inventory of the securities at the time she allegedly turned them over to Mr. Bird, and Mr. Bird gave her no receipt for any securities, but she has testified that she turned securities which she was unable to state the identity of, except I think she gave three names, two of which, as I recall it, were not among these particular securities -- as I say, she has testified she turned some securities over to Bird, and contends, and this is the principal basis for her claimed identity of such securities, that the paper prepared by Mr. Sullivan, referred to repeatedly in this case and known as Exhibit 6 B, discloses the identity of these securities, which she claims Mr. Bird received from her two days after the cedar chest which she claims was taken to her home.

1237 Mrs. McCord contends this paper writing was prepared by Mr. Sullivan on December 29 or 30, at which time Mr. Bird had taken no securities from the safety deposit box of Mrs. Jeffords, and that they were therefore the securities turned over to Mr. Bird by her.

Mr. Bird contends that the paper writing, Exhibit 6-B, was prepared by Mr. Sullivan sometime thereafter when Mr. Bird had had an opportunity to gather securities belonging to Mrs. Jeffords, from other sources, including the safety deposit box of Mrs. Jeffords, and that the paper writing, Exhibit 6-B, is therefore no evidence of any securities delivered to him by Mrs. McCord.

Now as to the physical and mental capacity of Mrs. Jeffords to make a valid gift there has been evidence pro and con, and you will be required to weigh it and determine whether the executors and Mr. Bird have carried their burden of establishing by a preponderance of the evidence a lack of physical and mental capacity by Mrs. Jeffords to make a valid gift.

If you find that she did not have such capacity, that will end Mrs. McCord's case against the executors and Mr. Bird, and your verdict will be for the executors and Mr. Bird on this claim of Mrs. McCord.

But if you find that she did have such capacity, then you will proceed to determine whether or not Mrs. McCord otherwise made a valid gift of these securities.

The test generally as to whether or not Mrs. Jeffords had the mental and physical capacity to make a valid gift is whether she had the ability to understand the nature, extent, and value of her property and the gift, and who were the natural objects of her bounty, and had the mental and physical capacity to transact the business of making a gift on December 19, 1959, which was the date of the alleged delivery of the cedar chest to Mrs. McCord, and when the gift, if any, was consummated.

No gift can be made without unequivocal delivery of the gift to the donee, and that usually is the last act consummating a gift.

Now, neither age nor physical weakness and disability nor disease of the body, nor mental weakness will affect the validity of a gift where the donor has sufficient intelligence to understand the nature and effect of what she was doing and intelligently determine whether she should do it or not.

If you find that Mrs. Jeffords had the physical and mental capacity to make a valid gift, or that the executors and Mr. Bird have not established by a preponderance of the evidence a lack of such capacity, you will then have to determine whether the essential elements of a gift of the securities have been established in this case brought by Mrs. McCord. These essential elements are the following:

One: A positive intention on the part of Mrs. Jeffords at the time of the delivery of the securities, if you find they were delivered to Mrs. McCord, irrevocably to transfer title of the securities in question to Mrs. McCord; that is, to part with and divest herself of and give to Mrs. McCord complete dominion, control, and ownership of the securities, and to give them to Mrs. McCord.

Second: A voluntary and actual delivery of these securities as part of the contents of the cedar chest by Mrs. Jeffords to Mrs. McCord; and

Three: An acceptance by Mrs. McCord of the securities.

There is evidence in this case that Mrs. Jeffords said that she intended the cedar chest and its contents to be given to Mrs. McCord, and evidence that she knew generally what was in the chest; and accordingly, Mrs. McCord contends that Mrs. Jeffords intended to make a gift to her of these securities.

As I have stated, the executors and Mr. Bird contend that Mrs. Jeffords did not make a gift of the chest and contents to Mrs. McCord, and, in any event, that the securities were not in the chest and that no
1240 securities were given by Mrs. Jeffords to Mrs. McCord or turned over to Mr. Bird by Mrs. McCord.

It appears that the securities in question were not endorsed or assigned by Mrs. Jeffords, either in blank or to Mrs. McCord. If they had been, it would be strong evidence of a donative intent on the part of Mrs. Jeffords, but this lack of endorsement or assignment is not conclusive that no such intent existed, because securities can be made the subject of a valid gift without such endorsement or assignment, if the donative intent is otherwise shown by clear and convincing evidence.

However, this lack of endorsement or assignment on the securities should be considered and weighed by you in determining whether the donative intent existed on the part of Mrs. Jeffords and whether the securities were delivered to Mrs. McCord by Mrs. Jeffords.

And in this connection, the law provides that in an action against the executors, that no judgment shall be rendered in favor of a plaintiff founded on the uncorroborated statement of the plaintiff as to any transaction with or declaration of the deceased person.

Mrs. McCord has testified as to transactions and declarations
1241 allegedly made by Mrs. Jeffords and has offered witnesses who have supported her testimony as to declarations allegedly made by her, Mrs. Jeffords.

The executors have offered evidence disputing this.

Therefore, before you may find that Mrs. Jeffords intended to give the securities to Mrs. McCord on the basis of Mrs. McCord's testimony

as to any transaction or declaration of Mrs. Jeffords, you must find corroboration of Mrs. McCord's testimony. In other words, you must find evidence which corroborates Mrs. McCord's testimony although that evidence standing alone might not be sufficient in your judgment.

Corroborative evidence means that from which reasonable men might conclude that Mrs. McCord's testimony is probably true. Corroborative evidence is that which makes Mrs. McCord's testimony more credible or probable.

As I have stated, the burden of proof rests upon the executors and Mr. Bird to establish Mrs. Jeffords' lack of mental and physical capacity under the criterion I have given you to make the claimed gift by a preponderance of the evidence, and I have defined that term to you, and the burden rests upon Mrs. McCord to establish the essential elements of a gift, which I have given you, by clear and convincing evidence.

1242 If you find that she has carried this burden, if you previously have found Mrs. Jeffords did have the mental and physical capacity to make a gift or that the executors have not carried their burden of proving a lack of such capacity, you will find that the gift of the securities was made and your verdict will be for Mrs. McCord.

If you do not so find, you will find for the executors, and Mr. Bird, on this claim and your verdict will be for them.

In this connection, also, Exhibit 6-B makes no reference to the Fort Dodge, Des Moines and Southern Railway bonds which are claimed by Mrs. McCord, and therefore there is no evidence whatever that they were the subject of a gift to Mrs. McCord, and your verdict for either side will not embrace those bonds.

Now, that ends the first claim, my instruction to you on the first claim of Mrs. McCord against the executors and Mr. Bird.

The second claim in this case is the claim of the executors against Mrs. McCord embracing five separate claims. It involves, first, two United States Savings coupon bonds of the face value of \$5,000 each;

Second, cash in the amount of \$1220;

1243 Third, the cedar chest and certain contents; namely, silver flat-ware; service piece; papers, linens, et cetera;

Four, two rings, one a 3-stone diamond ring and a garnet ring; and

Five, one sunburst diamond pin.

This claim is made in one counterclaim but it will be necessary for you to consider it on the basis of five separate claims and render your verdict on these separate claims separately. This is because the separate counterclaims raise different issues and you are required, therefore, to render separate verdicts. And I shall give you a form of verdict for each of you when I am through so you will be able to carry in your minds these six separate claims involved in this case.

I shall first take up the claim of the two United States Government coupon bonds of a face value of \$5,000 each, which I shall refer to as the first counterclaim.

The executors claim that these bonds represent part of the estate of Mrs. Jeffords, and that Mrs. McCord has no right to them. Mrs. McCord claims that they were the subject of a gift to her by Mrs. Jeffords consummated on or about September 4, 1959, by delivery at that time of the bonds in question.

1244 Mrs. McCord concedes that these bonds were at one time the property of Mrs. Jeffords, and claims that on or about this date I have just mentioned, Mrs. Jeffords, seeking to protect herself against the vicissitudes of a possible protracted illness, and to provide Mrs. McCord with financial means for assistance to Mrs. Jeffords under such circumstances, proposed that Mrs. McCord buy the bonds from her in consideration of the sum of \$25, and in further consideration of Mrs. McCord's agreement to keep the bonds so that they or their proceeds could be used by Mrs. McCord if called upon by Mrs. Jeffords, or if her circumstances or needs required the use of the bonds or proceeds for the maintenance and care of Mrs. Jeffords, and to prevent Mrs. Jeffords from being transferred or placed in a nursing home or some other institution.

She also claims that the expressed intention of Mrs. Jeffords was that the bonds, except interest payments as they fell due during her lifetime, were to become the absolute property of Mrs. McCord without any reverter either of the bonds or remaining proceeds if they were sold, to Mrs. Jeffords, or her estate in the event that Mrs. Jeffords' financial or personal circumstances did not require their use for physical or financial assistance.

Now, such an arrangement, if you find it was made between Mrs. Jeffords and Mrs. McCord, would not under the law constitute a
1245 valid sale or contract because of the want and lack of sufficient consideration from Mrs. McCord to Mrs. Jeffords. To support a sale or contract there must be a sufficient consideration, and Mrs. McCord now disclaims any right to the bonds under a sale or contract, but contends that the arrangement was a gift, which does not require a consideration to support it.

The payment of \$25 by Mrs. McCord to Mrs. Jeffords, if you find it was paid for this purpose, would not constitute a valid or sufficient consideration for the purchase of two \$5,000 Government bonds, and Mrs. McCord contends it was only Mrs. Jeffords' lay person's idea of binding the arrangement, which Mrs. McCord contends was a gift subject to this condition.

You will therefore have to determine whether the essential elements of a gift of these bonds to Mrs. McCord have been established by clear and convincing evidence.

Now, the claimed exclusion of interest payments from the alleged gift is not conclusive that a gift of the bonds was not intended, as there could be a gift of bonds exclusive of interest payments if that was the intention of Mrs. Jeffords, but the fact that Mrs. McCord has testified that the interest payments were excluded during Mrs. Jeffords' life
1246 and indeed were deposited to the account of Mrs. Jeffords, is a fact which you should weigh and consider in determining whether or not a gift of the bonds themselves was intended, with interest payments excluded during her lifetime.

There is no dispute that the bonds at one time belonged to Mrs. Jeffords and were in Mrs. McCord's possession after her death, and are now in the registry of the court awaiting the disposition of this case, as indeed the other items except the contents of the chest and the rings. The contents of the chest referred to as linen, silverware, et cetera, are available to the court, but these two rings are claimed to be non-existent by Mrs. McCord, and to have been existent by Mr. Bird and the executors.

Now, in connection with a claim to these bonds, the executors also contend that if any gift purportedly was made of the bonds to Mrs. McCord by Mrs. Jeffords, she was not at that time physically and mentally capable of making such a gift.

The test as to mental and physical capacity to make a valid gift I have given you in relation to the claim for the gift of the securities, and the same test applies in this first counterclaim.

1247 However, I understand the executors do not contend that Mrs. Jeffords was lacking in such capacity before the time she made the power of attorney on or about October 17, 1959, but they claim she was thereafter so incapacitated. It will therefore be necessary for you to determine when this gift was made, if you find it was made at all, and to determine her capacity as of that time.

Mrs. McCord has testified that it was finally consummated on September 4, 1959, and the executors question that date of acquisition.

If you find that at the time of the purported gift Mrs. Jeffords had the mental and physical capacity to make a valid gift, if you find there was a gift, or that the executors have not sustained their burden of proof to establish by a preponderance of the evidence that she was lacking such capacity, you will then proceed to determine whether the essential elements of the gift of these bonds have been established by Mrs. McCord by clear and convincing evidence.

If you do not find that Mrs. Jeffords had the mental and physical capacity to make a gift, then your verdict will be for the executors.

As I say, if you find that she was, or that the executors have not carried their burden of proof to establish that she was lacking in such capacity by a preponderance of the evidence, you will then proceed to determine whether the essential elements of the gift of these bonds have been established by Mrs. McCord by clear and convincing evidence.

Now, these essential elements are as follows:

First, a positive intention on the part of Mrs. Jeffords at the time you find that the bonds were delivered to Mrs. McCord by Mrs. Jeffords, if you so find, to transfer title to these bonds to Mrs. McCord; that is, to divest herself and part with the bonds, and to give them to Mrs. McCord and to give her complete dominion and control and ownership of them, exclusive of interest payments during Mrs. Jeffords' lifetime, without any reverter of the bonds or the remaining proceeds to Mrs. Jeffords or her estate, and on condition that they be used, if necessary, as I have stated.

Second, a voluntary and actual delivery of the bonds by Mrs. Jeffords to Mrs. McCord; and,

Three, an acceptance by Mrs. McCord of the property.

If you find that Mrs. McCord has established these essential elements by clear and convincing evidence, your verdict will be for Mrs. McCord on this first counterclaim. If you do not so find, your verdict will be for the executors.

Now, the second counterclaim relates to the claim of the executors to the cash in the amount of \$1220 claimed by Mrs. McCord to have been in the cedar chest and which is now in the registry of this court. Whether it was in the cedar chest is questioned by the executors. This money is claimed by Mrs. McCord as a gift, it is claimed by the executors as part of the estate of Mrs. Jeffords; and they deny that any gift was made. As in the case of the securities claimed by Mrs. McCord in her suit, the executors have the burden of establishing that Mrs. Jeffords was physically and mentally incapable of making a gift of this money and their burden is to establish it by a preponderance

of the evidence. You will apply the same criteria as to capacity which I gave you in connection with the alleged gift of the securities claimed by Mrs. McCord in her suit, and your decision as to capacity on this claim for the money in this respect should be consistent with your finding on this point in connection with the claim of Mrs. McCord to the securities in her action, because it all relates to the same time.

Also, here again Mrs. McCord has the burden of establishing by clear and convincing evidence that a gift was made, and you will apply the same law that I gave you in respect of the claimed gift or securities to this branch of the case. The essential elements of this claimed gift are:

1250 A positive intention on the part of Mrs. Jeffords at the time of the receipt of the chest by Mrs. McCord, irrevocably to transfer title to this money to Mrs. McCord; that is, to divest herself of and part with and give to Mrs. McCord complete dominion and control, title and ownership of the money;

Second, a voluntary and actual delivery of this money as part of the contents of the cedar chest;

Third, an acceptance by Mrs. McCord of the money.

If you find that Mrs. Jeffords was physically and mentally capable of making the gift in question, or that the executors have not established by a preponderance of the evidence a lack of such capacity; and, further, that Mrs. McCord has established the essential elements I have given you for a valid gift by clear and convincing evidence, your verdict will be for Mrs. McCord on this second counterclaim for the money in the amount of \$1220.

If you do not so find, your verdict will be for the executors on this counterclaim for the money, \$1220.

Now, the third counterclaim relates to the claim of the executors to the cedar chest and contents, namely, silver flatware, service piece, paper, linens, et cetera. The executors claim that this property is part of the estate of Mrs. Jeffords, and Mrs. McCord claims that the

1251 chest and its contents were a gift made by Mrs. Jeffords to her as I have heretofore referred to. I have given you the law relating to gifts in respect to securities, made the basis of Mrs. McCord's claim against the executors, and you will apply the same law in respect of this third counterclaim and reach your verdict accordingly.

If you find that Mrs. Jeffords was physically and mentally capable to make a gift or that the executors have not sustained their burden of proof of lack of such capacity, and that Mrs. McCord has established the essential elements of a gift by clear and convincing evidence, your verdict will be for Mrs. McCord on this third counterclaim.

There is no dispute on this third counterclaim that the articles were in the chest, as there is in respect of the money and the securities made the basis for Mrs. McCord's claim.

If you do not so find, your verdict will be for the executors on this third counterclaim.

I come now to the fourth counterclaim, relating to the two rings, namely, one, a 3-stone diamond ring, and a garnet ring, claimed by the executors to have belonged to Mrs. Jeffords and to be in the possession of Mrs. McCord without right or title thereto.

1252 There is no question of a gift involved in this counterclaim. Mrs. McCord has testified that she does not have and never has had any such rings, and the executors have offered evidence to the contrary. Mrs. McCord contends that they may have confused these two rings, with the 3-stone imitation diamond ring which Mrs. McCord had previously given to Mrs. Jeffords, and the ruby gift, both of which are in the possession of the executors, the former having been delivered to them by the undertaker's representative, and the latter by Mrs. McCord at the time she delivered the bag containing several other rings. The executors contend to the contrary.

If you find that the executors have established by a preponderance of the evidence that Mrs. McCord has or had these rings, that she has not delivered them to the executors, and that they were the property of

Mrs. Jeffords, your verdict on this fourth counterclaim concerning the rings will be for the executors; and in that event you will also add to your verdict the value of such ring or rings as shown by the testimony.

If you do not so find, your verdict will be for Mrs. McCord on this fourth counterclaim and you will not add anything as to value.

1253 I now come to the last and fifth counterclaim of the executors against Mrs. McCord. It involves a sunburst diamond pin. Mrs. McCord had possession of this pin and it is now in the registry of this court awaiting disposition of this case.

Mrs. McCord claims that it was a gift made to her by Mrs. Jeffords on the occasion of the former's 50th birthday some five years ago. In this connection if a testator makes a specific bequest in a will of an article belonging to her, and subsequently makes a gift of that particular article to someone else, the gift is not invalidated by reason of the will since the will speaks as of the date of death.

As I have stated or perhaps I haven't stated, the executors deny that this gift was made by Mrs. Jeffords to Mrs. McCord, and you will apply the same law in respect to gifts that I have heretofore given, but in connection with the sunburst diamond pin, the executors also claim that Mrs. Jeffords did not have the physical and mental capacity to make a gift of this pin.

The test for determining mental capacity is the same as I gave you in respect of the claim for the gift of the securities, and you will apply
1254 the same test to this fifth counterclaim, relating it to the date that you find that the sunburst diamond pin was given to Mrs. McCord if you find it was given to her as a gift.

You also will bear in mind that the executors make no claim that Mrs. Jeffords was incapacitated prior to the date of the power of attorney, namely, October 17, 1959.

If you find that Mrs. Jeffords was physically and mentally capable of making a valid gift at the time of the delivery to Mrs. McCord of the sunburst diamond pin, if you find it was delivered to her, or if you find

that the executors have not carried their burden of proof by a preponderance of the evidence, you will then determine whether the essential elements of a gift have been established.

If you do not so find, your verdict will be for the executors.

In other words, if you find that Mrs. Jeffords was mentally and physically capable of making a gift of the pin at the time you find it was given to Mrs. McCord, if you so find, or that the executors have not carried their burden of proving a lack of capacity by a preponderance of the evidence, and you further find that the essential elements of a gift, which I have already given to you before in relation to other claims, 1255 have been established by clear and convincing evidence in respect of this sunburst diamond pin, your verdict will be for Mrs. McCord.

If you do not so find, it will be for the executors.

Now I shall give each of you, and ask the Clerk to pass to each of you, a form of verdict so that you will have it before you, and each of you may write down the verdict thereon for the purpose of refreshing his memory in case the jury is polled at the time you render your verdict.

Will you pass it amongst them now, Mr. Clerk, please?

I have already given a copy of this to counsel.

(Form of verdicts handed to each juror.)

THE COURT: Also give one to the alternate juror. You never know but that she may be called upon.

(Complied with.)

THE COURT: Now I do this because the case is complicated and I realize that you are in unfamiliar surroundings and might become nervous in the event you are called upon to render your verdict, and inasmuch as the verdict involves so many claims it might be difficult for you to keep them in mind.

I suggest, therefore, that each of you write down his verdict on 1256 this form and have it with you when you render your verdict.

You will notice that in each claim there is a place for you to state your verdict. For example, at the very top it is stated, "In the claim of Mrs. McCord against the executors and Mr. Bird individually, contained in the suit brought by Mrs. McCord against these defendants and relating to the securities allegedly delivered by her to Mr. Bird, do you find for Mrs. McCord or the executors and Mr. Bird?"

You will write there either "Mrs. McCord", or "Executors and Mr. Bird". One or the other. You must not write both. It is the party for whom you decide the case and in whose favor you decide the case.

The second is "In the first counterclaim by the executors against Mrs. McCord for the \$5,000 government bonds, do you find for the executors or Mrs. McCord?"

You will write either "Executors", or "Mrs. McCord", after you have made your determination.

Then I go on, "In the second counterclaim of the executors for \$1220 in cash, do you find for the executors or Mrs. McCord?", and you will state either "Executors" or "Mrs. McCord".

And the form goes on, "In the third counterclaim of the executors
1257 for the cedar chest and contents containing silver flatware, service piece, papers, linens, et cetera, do you find for the executors or Mrs. McCord?" You will state either "Executors" or "Mrs. McCord" in that answer in the blank space.

"In the fourth counterclaim of the executors for two alleged rings, one a 3-stone diamond ring and the other a garnet ring, do you find for the executors or Mrs. McCord?", you will write down either "Executors" or "Mrs. McCord" in the blank space.

Now, if you find for the executors you will then state the fair market value, as disclosed by the evidence, of the ring or rings that you find Mrs. McCord had and has not returned, as follows "\$___"; then you will put down the dollars.

And if you find for Mrs. McCord you will not make any finding of the fair market value, because it is unnecessary.

Is that understood?

I see you nod your heads.

"In the fifth counterclaim of the executors, the one sunburst diamond, do you find for the executors or Mrs. McCord?" You will state, "For executors" or "Mrs. McCord."

1258 I hope that will make it a little easier for you. It certainly will refresh your recollection.

Now, your verdict on each of these claims must be unanimous. When you have reached your verdict on all of these claims you will make that fact known to the Marshal and I shall bring you in and your foreman will announce your verdict on each of these claims. If the jury is polled, each of you will be required to announce his verdict on each of these claims, and you will have your copy of the verdict in your hands to refresh your recollection if it should need refreshing.

When you go to your jury room, you will first select your foreman, who will preside over your deliberations and see to it that each of you is given a reasonable opportunity to express his views and make his arguments.

As I say, your verdict on each claim must be unanimous.

Now, if there are objections, gentlemen, I will hear them at the bench.

(At the bench:)

MR. LASKEY: Do you wish me first, Your Honor?

THE COURT: I don't care.

MR. LASKEY: I would except to the instruction with regard to the Des Moines, Exhibit 6-A having explained their absence from the list.
1259 I would except to the charge in each, where, if applied, the requirement of clear and convincing evidence with respect both to the cedar chest and to the two Treasury bonds, our position being the gifts were claimed prior to death and that that does not apply.

I would except to the failure to give our instruction number one, including the definition of the capacity to do business, is not, however,

the capacity to do business but whether or not she had any, even the smallest capacity to understand what she was doing.

And to the instruction which in effect established the standard for the capacity in terms of a business transaction or testamentary capacity.

THE COURT: They are duly noted.

May I hear yours?

MR. LEEMAN: Your Honor stressed the testimony in the deposition of the two witnesses tended to corroborate Mrs. McCord with reference to the gift of the chest.

THE COURT: One did and one didn't. I simply gave a standard charge as to depositions.

1260 MR. LEEMAN: Well, you mentioned their names, see?

THE COURT: Well, I had to. No other depositions were read in evidence, except for impeachment purposes.

MR. BIRD: Croxton's was.

THE COURT: Croxton. Was that a deposition that was read in evidence?

MR. LASKEY: Yes, it was.

THE COURT: Then perhaps I ought to mention that. I should. I had forgotten it.

MR. LASKEY: I had forgotten it, too.

MR. BIRD: That is as to the sunburst diamond pin. She wore that after she went back to Mrs. Jeffords.

THE COURT: I forgot about that. No wonder.

MR. LEEMAN: I have forgotten a lot of things, too, Your Honor.

This testimony is very important -- the way Your Honor has given the charge, it looks as if the cedar chest and the contents and nothing else, but there is testimony that there was to be a sorting out of contents.

I think the jury should be told, or their attention should be called to that testimony as to one witness, for whatever it is worth.

THE COURT: I don't know what you are talking about, "sorting out".

1261 MR. LASKEY: I don't either.

MR. LEEMAN: It was in one of the depositions.

MR. LASKEY: One of the depositions referred to a box of items that was to be taken out. I think that is in one of the depositions.

THE COURT: It was not read in evidence. It was a discovery deposition, wasn't it?

MR. LEEMAN: No. I remember the testimony. Perhaps Mr. Bird might be able to find it.

One said "I am giving you the cedar chest; we can sort the contents out."

MR. LASKEY: I recall no such testimony.

THE COURT: I just don't remember, now.

Was it by deposition or did a witness testify to that?

MR. LEEMAN: I am trying to remember.

MR. BIRD: It is in a deposition.

THE COURT: Was the deposition read? Whose deposition was it?

MR. BIRD: Mrs. McCord's deposition.

THE COURT: She didn't testify by deposition.

1262 She testified and she was cross examined for impeachment, but what she said in her deposition does not come in unless brought in by impeachment.

MR. LEEMAN: That is where I believe it was. I read that.

THE COURT: That is for impeachment.

MR. BIRD: That was in a question.

THE COURT: That would not be her testimony, though, unless she said "Yes, I did that."

MR. LEEMAN: She did.

THE COURT: Then that is her testimony.

MR. LEEMAN: That is her testimony in the case.

MR. BIRD: This is Mrs. McCord's testimony here in the deposition, and Mrs. Croxton said it was in her possession shortly before she --

THE COURT: I will refer to Mrs. Croxton and any evidence given in a deposition I will give.

MR. LEEMAN: The way Your Honor instructed the jury, that it was the night of the 50th birthday, she gave the sunburst diamond pin, it leaves out evidence that was submitted by this deposition that this woman was here in the month of September and saw Mrs. Jeffords wearing the pin.

THE COURT: You argued that to the jury.

1263 MR. LEEMAN: I am talking about the way Your Honor has instructed them.

THE COURT: I don't think I better go into that.
You have your objection.

MR. LEEMAN: I will handle it that way, Your Honor; the way the instruction was given with respect to the sunburst pin, that the evidence as to the possession of it was not made clear -- that would be my exception.

THE COURT: Very well.

MR. LEEMAN: Mr. Bird just referred to the stock certificates, supposed to be in the cedar chest, and they weren't identified.

THE COURT: I think the only basis for identification was this Sullivan Exhibit 6-B. I went into that pretty fully.

MR. BIRD: Yes, sir.

THE COURT: You have your objection.

(In Open Court:)

THE COURT: Members of the jury, I gave you certain instructions with relation to the deposition of Mrs. Rochambeau and Mrs. Souder. I overlooked and forgot entirely that there was the deposition of Mrs. Croxton and also other depositions were read for impeachment purposes.

1264 I instruct you now that testimony by way of deposition, irrespective of whether it was Mrs. Rochambeau or Mrs. Souder or Mrs. Croxton, or Mrs. McCord, is entitled to the same -- or anyone else, is entitled to the same consideration and the same judgment on your part in determining the weight of the testimony of the witness, as you would give it where the witness were personally before you. You are not to discount testimony by deposition merely because it is by deposition.

Is that sufficient so far as that point is concerned?

MR. LEEMAN: Yes, Your Honor.

THE COURT: Now, Madam Alternate Juror, the time has come for me to excuse you, with expressions of gratitude from the Court for listening so attentively and being able to substitute if you were called upon. I now excuse you.

(Alternate juror left jury box.)

THE COURT: The jury will now take the case and commence their deliberations.

(Whereupon, at 2:50 p.m., the jury retired to deliberate of their verdict.)

(Whereupon, at 5:50 p.m., the jury returned to the courtroom and took their seats in the jury box, at which time the following proceedings were had:)

1265 THE COURT: Members of the jury, you have now been deliberating about three hours, and not having heard from you I assume, of course, that you have not reached a verdict.

Now, I don't wish to inconvenience you unduly in the performance of jury duty, and I am fearful that some of you may have engagements for this evening and it may embarrass you if you are required to stay here any longer. So I am going to allow you to separate and return tomorrow morning at ten o'clock to resume your deliberations.

Now, I want you to remember the admonition I have given you several times during this trial, not to discuss this case with anyone or allow anyone to discuss it with you and not to discuss it amongst yourselves until you reassemble at ten o'clock tomorrow morning in this jury room.

When you go home tonight perhaps members of your families will be inquisitive; they usually are; and want to know what you have been doing, and perhaps you would like to discuss it with members of your family, but I admonish you -- I admonish you very strongly that you are not to discuss this case with anyone. These parties are entitled to your verdict uninfluenced by anyone else.

1266 Now I rely on you as conscientious jurors to follow my admonition. I am giving you this opportunity to separate tonight so as not to inconvenience you, and I must insist that you follow my instructions in this regard.

You are excused until tomorrow morning at ten o'clock, to return here without fail at ten o'clock, when all twelve are in the jury room, and resume your deliberations. Not until then.

You keep your forms of verdict with you and have them here tomorrow morning. Keep them with you. I see they are in your hands now. Keep them. Keep them and have them here tomorrow morning on your person.

(Whereupon, at 6:00 p.m., the trial recessed, to resume Wednesday, October 2, 1963, at 10:00 a.m.)

1267

Washington, D.C.
Wednesday, October 2, 1963

* * * * *

1268

(In Chambers: 2:10 p.m.)

MR. LASKEY: I would now request that the Court reinstruct the jury with respect to the mental capacity of the decedent Laura Jeffords with respect to the time at which she must have had capacity to make a gift.

On two occasions during the charge, the Court instructed the jury that the critical time when Mrs. Jeffords' capacity was to be determined was December the 19th, which was the date of the actual physical removal of the chest from the Jeffords residence to the McCord residence.

The basis of the reinstruction, we submit, should be that the time period should encompass the days prior to December 17 or 18, because the evidence in the case would permit the jury to find that if the decedent Laura Jeffords on December 17 or 18 or at any time on the 19th, prior to being stricken with a stroke, actually expressed words of gift in praesenti by telling Mrs. McCord that the chest was hers and that at that time before December 19th the decedent Laura Jeffords had the capacity to make that gift and it was the intention following the words

"gift" of the donee to accept the gift, that that completed the gift and that those circumstances would constitute an exception to the general rule that actual delivery is necessary for the consummation of the gift
 1269 inter vivos; that the law is that where the object of the gift is a bulky item, or for some other reason, actual manual delivery is impractical, the delivery by manual taking possession is not required, but that actual removal of the item at a subsequent date renders complete which theretofore was inchoate, and that in this case if, prior to the 19th, the jury finds the intention to give and to accept was complete, the fact that removal did not take place until the following Saturday, which would be the earliest practical time under the circumstances of this case, if the jury should so find, would be a complete gift.

In support of that we cite 24 Am. Jur., page 744, Sec. 26, and rely upon the following cases which hold in the tenor of the request which has been such just made.

Gammon Theological Seminary vs. Robbins, 128 Indiana 85.

Mat Martrick vs. Linfield, 21 Pickering (Mass) 325.

Harris vs. Hopkins, 43 Mich, 272.

Ross vs. Draper, 55 Vermont 404.

In justification of making the request at this time we call the Court's attention to the fact, (1) that at bench conference on October 1, when the question of the charge was being discussed, the Judge stated to Mr. Leeman:

1270 "I thought your position was that mental incapacity limited to gift of chest on December 17. You are on the horns of a dilemma." And that reference was then made to the power of attorney.

THE COURT: Right after that, Mr. Leeman said he made a mistake, meant to say October 17.

MR. LEEMAN: That is right.

THE COURT: Which was the date of the power of attorney.

MR. LEEMAN: That is right.

MR. LASKEY: Yes, sir; that is correct.

In the Judge's charge there is no question that December the 19th was stated as the critical date.

We did not recognize that fact at that time -- I did not recognize that fact at that time. It was following that time and during conversation with an alternate juror who had been excused, whose name I do not now know, but who was the only alternate juror at the time the case was submitted.

She remained in the court house for some period of time while the jury was deliberating during the course of which she had a conversation with counsel. I saw her talking with counsel for the executors and also discussed with us. I make no reference or no implication by that fact, 1271 which I think is entirely proper for both sides to do.

But during the course of the conversation with Mr. Gray, part of which I participated in, the juror indicated that she was confused over the reference in the Judge's charge to December 19, indicating to us at least that she had thought that the gift was complete prior to that time.

We submit that although this request for an additional instruction is made after the jury has been deliberating approximately six hours, it is late, but it is not too late to correct an error which has now developed and which counsel has just come to an appreciation of the significance of it.

THE COURT: Mr. Leeman?

MR. LEEMAN: I object, because I think the charge as a whole clearly states the law, and the question of her capacity, whether it be the 19th or the 17th, is fairly before the jury for the reason that the nurse's chart, who was supposed to have overheard some conversation-- that is, Nurse Michalka -- the chart shows what her condition was on the 17th which was the day that she came to work, wasn't it?

MR. BIRD: No; her chart --

MR. LASKEY: She testified she came on the 17th.

MR. BIRD: She testified she came on duty on the 17th.

1272 MR. LEEMAN: Yes; she testified she came on duty on the 17th, and I want it in the record that this was brought to our attention and we agreed to come before the Judge with this point because we have had no opportunity to examine any authorities on this point. But our position is that the authorities that have been cited are not applicable to this situation. I don't believe any harm has been done. And furthermore, as has been stated by counsel on the other side, I talked with this alternate juror after she had been discharged, and her statement to me was that she hadn't made up her mind, and nothing was said to me with respect to this point. The only point that she raised at me was that they thought it was odd that our opponents hadn't called the doctor.

So we are opposed to any further variation on the part of the judge of his charge. We believe it would be prejudicial. And that is that.

THE COURT: Well, this case was submitted to the jury at 3:00 o'clock on the afternoon of October 1st. They deliberated until approximately six o'clock and I allowed them to separate for the night. They reassembled at ten o'clock on the morning of October 2nd and deliberated until lunch time at 12:30 p.m., when they were taken to lunch and returned about 1:30 p.m. They have been deliberating since then and it is now 22 minutes after 2:00.

1273 Counsel for Mrs. McCord brought this matter to my attention about a quarter of two and discussed it at some length and then we asked that the reporter come in so a record could be made of the motion. There was some delay in locating the reporter and that is the reason it is before me at this hour on October 2nd.

Now, no request for such instruction was made to me before the case was submitted to the jury; no objection along this line was made to me at the time I invited objections. I feel that the motion is not timely made for reinstructing the jury after they have deliberated such a length of time.

I deny the motion.

I might also add that I don't believe that the law cited is applicable to the facts in this case.

MR. LASKEY: May I ask one thing further? What would Your Honor's view be about our talking to jurors after a verdict is rendered?

THE COURT: Well, I personally think it is an exercise in futility. I personally don't think it is a good practice. I have sometimes told jurors that they are not required to talk to counsel and they may not if they do not wish to. I know of no rule which forbids it.

1274 MR. LASKEY: That is what concerned me, was the propriety of it.

THE COURT: I don't know of any rule.

MR. LEEMAN: You find out some.

THE COURT: Is that all, gentlemen?

MR. LASKEY: Yes, sir.

THE COURT: All right.

(Open Court:)

(Whereupon, at 3:17 o'clock p.m., the jury entered the court room and the following proceedings occurred:)

THE COURT: Members of the jury, I have received the following note from you:

"Judge, Your Honor, we can not come to a decision.

"Foreman, Francis Sembly."

Now, I am going to give you one additional instruction which has the approval of the Supreme Court of the United States, and it is as follows:

JUDGE'S ADDITIONAL CHARGE TO JURY

THE COURT: (Pine, J.): The jury are instructed that in a large proportion of cases absolute certainty cannot be expected, that although the verdict must be the verdict of each individual juror and not a mere acquiescence in the conclusion of his fellows, yet they should examine the question submitted with candor, and with a proper regard and
1275 deference to the opinions of each other, that it is their duty to decide the case if they can conscientiously do so; that they should listen with a disposition to be convinced of each other's arguments; that if much the larger number are for the claimant in any of the claims before you, a dissenting juror should consider whether his views, which

make no impression upon the minds of so many persons equally honest, equally intelligent with himself, are correct. If, upon the other hand, the majority are for the other side on any such claim, the minority ought to ask themselves whether their views are correct which are not concurred in by the majority.

I will ask you to return to your jury room and resume your deliberations in the light of that instruction.

(Whereupon, the jurors retired at 3:20 p.m. to deliberate further of their verdict.)

(Whereupon, at 5:50 p.m., the following proceedings occurred, out of the presence of the jury.)

MR. LEEMAN: Your Honor, it appears up to this point that the jury is in disagreement, and I think it is very appropriate that I renew my motions for a directed verdict before Your Honor would discharge this jury if that contingency should arise, for this reason:

1276 That Your Honor has been eminently --

THE COURT: I am not thinking of discharging them now, Mr. Leeman.

MR. LEEMAN: That is all right.

I would like to leave this thought with you -- while this is being further weighed, if the time should come that Your Honor is considering discharging the jury, that Your Honor would under these conditions be justified in directing this jury to return a verdict for the executors in view of the situation of the evidence, the fact that the executors are officers of this Court and bound to carry out their duties as executors.

Your Honor will recall there is no definite evidence --

THE COURT: Now I am not going to hear this argument again. I have heard your argument on that. You wish to renew your motion?

MR. LEEMAN: For a directed verdict, in view of the situation, before Your Honor would consider discharging this jury.

THE COURT: Motion is denied.

Now, I think that probably, rather than sending them home tonight, that perhaps I had better keep them together until they reach a verdict if they do reach a verdict.

1277 Yes, Mr. Marshal, at 6:00 o'clock you will arrange to take them to dinner.

THE MARSHAL: Yes, sir.

THE COURT: And I will expect you gentlemen to be on tap for the rest of the evening.

MR. LASKEY: What period of time would you allow us for dinner? You are taking them at 6:00 o'clock.

THE COURT: Until half past seven?

MR. LASKEY: Fine; thank you.

THE COURT: You will have them back by half past seven, won't you?

THE MARSHAL: Sir, I think it will be closer to eight because they will have to make arrangements with them at the hotel.

THE COURT: I understand. That means a telephone call, doesn't it?

THE MARSHAL: That is right, sir, and a bus.

MR. LEEMAN: We are excused until eight o'clock, then.

THE COURT: I don't know. I haven't decided that yet, because he says it will take some little time before the jury can be taken to dinner.

1278 In that interval, they might reach a verdict so I don't see how I can excuse you.

MR. LEEMAN: That is all right. Just want to find out how we stand.

THE COURT: Well, I am telling you.

I will recess until the return of the Court, and at 6:30 you will be excused, gentlemen, until 8:00 o'clock tonight.

(Whereupon, at 6:00 p.m., the Court recessed, to reconvene at 8:00 p.m., of the same date.)

*

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[Filed Feb. 5, 1964]

DEFENDANT'S EXHIBIT NO. 1

Agreement between Estelle McCord & Laura L. Jeffords

Whereas:

Party of the first part hereby agrees to serve as secretary four hours each week, for fifty-two weeks.

AND Whereas:

Party of the second part agrees to give in return one antique set of five pieces, red velvet-colored furniture, at the expiration of the fifty-two weeks to the party of the first part for services rendered.

AND WHEREAS:

If the party of the second part should expire during this period, the aforesaid named furniture should become the property of the party of the first part.

AND FURTHERMORE:

THE furniture is to remain in the possession of the party of the second part until fully paid for.

/s/ Estelle S. McCord

/s/ Laura L. Jeffords

WITNESS my hand and seal this day 6th of August in the year of our Lord, nineteen hundred and fifty-seven.

/s/ Marie Starczewski

Notary Public

My Commission Expires June 14, 1959.

Washington, D. C.

Witness: /s/ Frances M. Rodecker

Witness: /s/ Irene F. Windrow

[Filed Feb. 5, 1964]

DEFENDANT'S EXHIBIT NO. 2

Agreement between Estelle McCord & Laura L. Jeffords

WHEREAS:

Party of the first part hereby agrees to serve as secretary four hours each week, for fifty-two weeks.

AND WHEREAS:

Party of the second part agrees to give in return one antique set of five piece red velvet-colored furniture, at the expiration of the fifty-two weeks to the party of the first part in return for services rendered

AND WHEREAS:

If the party of the second part should expire during this period, the aforesaid named furniture should become the property of the party of the first part.

AND FURTHERMORE:

The furniture to remain in the possession of the party of the second part until fully paid for.

/s/ Estelle S. McCord

/s/ Laura L. Jeffords

WITNESS my hand and seal this day 6th of August in the year of our Lord, nineteen hundred and fifty-seven.

/s/ Marie Starczewski
Notary Public

My Commission Expires June 14, 1959.

Washington, D. C.

Witness: /s/ Frances M. Rodecker

Witness: /s/ Irene F. Windrow

[Filed Feb. 5, 1964]

DEFENDANT'S EXHIBIT NO. 3

M. ELLIOTT RANDOLPH, M.D.
Eleven East Chase Street
Baltimore 2, Maryland

March 25, 1954

Mrs. Laura L. Jeffords
2707 Woodley Road, N. W.
Washington, D. C.

Dear Mrs. Jeffords:

I am indeed very sorry that your sight seems to have gotten so much worse.

Your visual difficulty is located in the central part of each eye and while this may continue to get worse, I still maintain that your side vision will always continue to be unimpaired and unless you have some entirely different disease than you had when I saw you in December, I still feel certain that you will never become totally blind.

I know that it is difficult for you to see the telephone and that you cannot recognize your friends but your side vision should stay with you the rest of your life.

With kindest regards and best wishes.

Very sincerely yours,

/s/ M. Elliott Randolph

[Filed Feb. 5, 1964]

ATTACHMENT TO DEFENDANT'S EXHIBIT NO. 3

[Date Stamp-
March 29, 1954 -11 - PM
Baltimore, Md.]

* * *

Mrs. Tracy L. Jeffords
2707 Woodley Rd. N. W.
Washington 8, D. C.

**DISTRICT OF COLUMBIA DEPARTMENT OF PUBLIC HEALTH
CERTIFICATE OF DEATH**

1. PLACE OF DEATH		NAME OF HOSPITAL OR INSTITUTION (If not in hospital, give street address)		LENGTH OF STAY IN	
Washington, D. C.		2707 Woodley Road, N.W.			
2. USUAL RESIDENCE (Where deceased lived. If institution: Residence before admission)					
a. STATE	b. COUNTY	c. CITY, TOWN, OR LOCATION		d. IS RESIDENCE INSIDE CITY LIMITS?	
D.C.		Washington		YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
d. STREET ADDRESS		e. IS RESIDENCE ON A FARM?		f. IS RESIDENCE ON A FARM?	
2707 Woodley Rd. N.W.		YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
3. NAME OF DECEASED (Type or print)		4. DATE OF DEATH		5. AGE (In years, if under 1 year, if under 24 hours, last birthday)	
LARA LOUISE JEFFORDS		Dec 25, 1959		89	
6. SEX	7. COLOR OR RACE	8. MARRIED	9. DATE OF BIRTH	10. AGE (In years, if under 1 year, if under 24 hours, last birthday)	
Female	White	<input checked="" type="checkbox"/> NEVER MARRIED <input type="checkbox"/>	1-9-1870	89	
10a. USUAL OCCUPATION (Give kind of work done during most of working life, even if retired)		10b. KIND OF BUSINESS OR INDUSTRY		11. BIRTHPLACE (State or foreign country)	
Housewife				Mass.	
13a. FATHER'S NAME		13b. MOTHER'S MAIDEN NAME		14. NAME OF SURVIVING SPOUSE	
Asaph Dodge		Laura L. Kentz		--	
15. WAS DECEASED EVER IN U. S. ARMED FORCES? (Yes, no, or unknown) (If yes, give war, dates of service)		16. SOCIAL SECURITY NO.		17. INFORMANT RELATIONSHIP TO DECEASED	
No		No		James P. Bird - Attorney	
18. CAUSE OF DEATH (Enter only one cause per line for (a), (b) and (c).)				INTERVAL BETWEEN ONSET AND DEATH	
PART I. DEATH WAS CAUSED BY:				7 days	
IMMEDIATE CAUSE (a) Cerebral thrombosis					
Conditions, if any, which gave rise to above cause (a), stating the underlying cause last.				14 days	
DUE TO (b) Cerebral & Arteriosclerosis					
DUE TO (c)					
PART II. OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RELATED TO THE IMMEDIATE CAUSE GIVEN IN PART I (a)					
19. WAS AUTOPSY PERFORMED? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>					
20a. ACCIDENT SUICIDE HOMICIDE		20b. DESCRIBE HOW INJURY OCCURRED. (Enter nature of injury in Part I or Part II of item 14.)			
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>					
20c. TIME OF INJURY		20d. PLACE OF INJURY (e.g., in or about home, farm, factory, street, office bldg., etc.)			
Month, Day, Year					
20e. INJURY OCCURRED		20f. CITY, TOWN, OR LOCATION			
WHILE AT WORK <input type="checkbox"/> NOT WHILE AT WORK <input checked="" type="checkbox"/>		Shreve, Ohio			
21. I attended the deceased from 15th Nov 59 to 25 Dec 59 and last saw her alive on 25 Dec 59. Death occurred at 8:30 PM on the date stated above and to the best of my knowledge, from the causes stated.					
22a. SIGNATURE		22b. ADDRESS		22c. DATE	
M. J. Richardson		22b. ADDRESS		22c. DATE	
23a. BURIAL CREMATION REMOVAL		23b. DATE		23c. NAME OF CEMETERY OR CREMATORY	
<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>		12/28/59		Oak Grove Cemetery	
24. UNDERTAKER		24b. ADDRESS		24c. CITY, TOWN, OR LOCATION	
The Little Home Co.		2901 N. 7th St.		Shreve, Ohio	
REMARKS					

JUN 21 1960

This is to certify that the above is a true and correct reproduction of the original in file in the Vital Statistics Section of the District of Columbia Department of Public Health

Pietro Giancoli
Pietro Giancoli
Chief, Vital Statistics Section

BEST COPY AVAILABLE
from the original bound volume

[Filed Feb. 5, 1964]

DEFENDANT'S EXHIBIT NO. 7

2707 Woodley Road, N. W.,
Washington 8, 1959
October 16, 1959

TO WHOM IT MAY CONCERN:

It is my wish that MR. JAMES F. BIRD OF 3616 Sixteenth Street, N.W., Washington, D.C., take charge of all my personal and financial affairs during the period that I am incapacitated. Should I not recover from my present illness and expire, it is my desire that the said Mr. James F. Bird continue to have charge until my will is read.

I desire that my body be taken to The S. H. Hines Funeral Parlor in Washington, D.C., and thence to Shreve, Ohio, in care of Paul Morgan, Funeral Director at Shreve, Ohio.

/s/ Laura L. Jeffords

WITNESSES:

/s/ Raymond S. Sifdol
244 West 12th Avenue
Eugene, Oregon.

/s/ Wray Rochambeau
2745 29th St., N.W.
Washington 8, D. C.

/s/ WOMeldorf

[Filed Feb. 5, 1964]

DEFENDANT'S EXHIBIT NO. 8

In case of accident or death

Laura L. Jeffords
2707 - Woodley Road, N.W.

Notify Dr. Paul - Wooster, Ohio
203 No. Bern St.

Mrs. Hugh Taylor
5420 Conn. Ave., N.W.

Miss Ellie Gill
Notify - Mrs. Anna Simonson
or Mrs. R. L.
623 Colonial Dr.
Colonial Heights, Va.

Mrs. Dorothy Yoder
Notify Mrs. Patricia Olds
2803 - Cortland Place, N.W.
Apt. - 305.

[Filed Feb. 5, 1964]

ATTACHMENT TO DEFENDANT'S EXHIBIT 8

Mrs. L. L. Jeffords
2707 - Woodley Road, N.W.
Washington, D. C.

Mr. James Bird
#3636 - 16th St., N.W.
Washington, D. C.

The Woodner

[Filed Feb. 5, 1964]

DEFENDANT'S EXHIBIT NO. 9

POWER OF ATTORNEY

Know All Men by These Presents

THAT Laura L. Jeffords have constituted and appointed, and by these presents do hereby constitute and appoint James F. Bird, of Washington, D.C., my true and lawful attorney for me and in my name and stead:

(a) To sign my name to checks (including checks to his own order) for the withdrawal of any funds now or hereafter on deposit to my credit with the American Security and Trust Company of Washington, D. C.

(b) To endorse my name on all checks, notes, drafts, and other negotiable paper belonging to me or made payable to my order, for any purpose whatsoever.

(c) and generally to do and perform any and every lawful act and thing necessary to effect the same, with full power of substitution and revocation, hereby ratifying and confirming whatever said Attorney or substitute may lawfully do in the premises.

The said Trust Company shall be under no obligation as to any check so signed or paper so endorsed by said agent to make inquiry as to whether or not said agent is committing a breach of his duty as such agent; and I hereby release said Trust Company from any liability to me by reason of any breach of trust on the part of said agent.

WITNESS my hand and seal this 19th day of October, 1959.

Signed, sealed and delivered in
the presence of:

/s/ Wray Rochambeau
/s/ Emma Sobel

Laura L. Jeffords
HER MARK (Seal)

AUTHORIZED SIGNATURE OF

Laura L. Jeffords	BY
James F. Bird	ATTORNEY
<hr/>	
Addressed As	
	3636 - 16th St., N.W., Wash. 10, D. C.
Home Address	Tel. No.
	Adams 4-5136
Business Address	Tel. No.
	Oct. 19, 1959
Occupation	Date
	Attorney at Law

[Filed Feb. 5, 1964]

DEFENDANT'S EXHIBIT NO. 10WAIVER OF PRIVILEGE

We, James F. Bird and Jerome Keith, Co-Executors of the Estate of Laura L. Jeffords, Deceased, hereby waive the privilege in so far as our attorney, Charles B. Sullivan, Jr., is concerned, allowing to him to tell anything that he knows or which has come to his attention in so far as the Estate of Laura L. Jeffords is concerned.

/s/ James F. Bird

/s/ Jerome Keith

[Filed Feb. 5, 1964]

DEFENDANT'S EXHIBIT NO. 16

October 19, 1959

Mrs. Laura L. Jeffords
2707 Woodley Road, N. W.
Washington, D. C.

Dear Mrs. Jeffords:

We sincerely regret to learn of your present illness and wish to advise you that, in accordance with your letter this date, we have transferred \$1,000.00 from your Savings No. 29-8 to your checking account.

In view of the fact that your illness has obviously affected your signature, we suggest to you that it may be advisable to select someone in whom you have complete trust to act as power of attorney on your account until such time as your signature is normal. If, in your opinion, such a person is available to render this service, I suggest you initiate proceedings immediately.

Very truly yours,

Claude E. Miller
Assistant Treasurer

CEM/ps

[Filed Feb. 5, 1964]

DEFENDANT'S EXHIBIT NO. 17

2707 Woodley Road, N.W.
Washington, D. C.
October 19, 1959

American Security and Trust Co.

Dear Sirs,

Please transfer \$1,000 of my Savings Account to
my Checking Account.

Sincerely,

/s/ Laura L. Jeffords

[Letter addressed to Mrs. Laura L. Jeffords from Claude
E. Miller under date of October 19, 1959 and attached to
Defendant's Exhibit No. 17 is identical to Defendant's
Exhibit No. 16, which appears on the preceding page of
this Joint Appendix.]

[Filed Feb. 5, 1964]

DEFENDANT'S EXHIBIT NO. 20

M. ELLIOTT RANDOLPH, M.D.
Eleven East Chase Street
Baltimore 2, Maryland

March 25, 1954

Mrs. James F. Bird
2707 Woodley Road, N. W.
Washington, D. C.

Dear Mrs. Bird:

I am enclosing a copy of the letter which I have
written today to Mrs. Jeffords.

Very sincerely yours,

/s/ M. Elliott Randolph

[Filed Feb. 5, 1964]

ATTACHMENT TO DEFENDANT'S EXHIBIT 20

M. Elliott Randolph, M.D.
Eleven East Chase Street
Baltimore 2, Maryland

[Date Stamp-
March 29, 1954
11 - PM
Baltimore, Md.]

Mrs. James F. Bird
2707 Woodley Road, N.W.
Washington, D. C.

[Filed Feb. 5, 1964]

ATTACHMENT TO DEFENDANT'S EXHIBIT 20

[Copy of letter to Mrs. Jeffords from M. Elliott Randolph under date of March 25, 1954 is identical to Defendant's Exhibit No. 3, which appears herein on page 366 of this Joint Appendix]

[Filed Feb. 6, 1964]

PLAINTIFFS' EXHIBIT NO. 1

Washington, D.C. Sept. 4, 1959 No. _____		
CC	THE RIGGS NATIONAL BANK Chevy Chase Branch Connecticut Ave. And Morrison St.	15-3 511
Pay to the order of	Laura L. Jeffords	no \$25.100
Twenty-five and no/100 - - - - -		Dollars
/s/ Estelle Smith McCord		

[Reverse Side of Plaintiffs' Exhibit No. 1]

Endorsed by /s/ Laura L. Jeffords
SEP 9 1959

[Filed Feb. 6, 1964]

PLAINTIFFS' EXHIBIT NO. 6A

CHARLES B. SULLIVAN, JR.
Attorney At Law
210 Shoreham Building
Washington 5, D. C.

* * * *

January 9, 1961

Robert M. Gray, Esquire
719 15th Street, N.W.
Washington, D. C.

RE: McCord versus Bird
Civil Action No. 1746-60

Dear Mr. Gray:

Attached hereto please find a photostatic copy of the one sheet previously referred to in my deposition and which was ordered exhibited to you.

The first eleven (11) items through the H bond in the amount of \$1,000.00, are all securities which were turned over to me by Mr. Bird with the unassorted papers delivered to me in the early part of the day on December 30, 1959. This was immediately following Mr. Bird's return from Shreve, Ohio on the 29th of December and the burial of Mrs. Jeffords. These papers had been assembled from many points and neither Mr. Bird nor I have any knowledge that any of these securities were ever in the cedar chest.

The 12th item on this list was merely a confirmation notice from the American Security and Trust that the bonds, as numbered, had been acquired for Mrs. Jeffords and were being held by them. The 13th item on this list was merely a notation from the American Security & Trust that a certain note was being collected and that a payment had been made thereon.

The balance of the items are all savings account books which were acquired at a later date from the house of Mrs. Jeffords, as was the last item, a check. As you will notice, the item testified about; that is, the Des Moines bond, is not listed hereon. The Des Moines bond was acquired with the second group of assets; that is, savings account books at the home of Mrs. Jeffords and said certificate bore a letter from the company indicating that because of a receivership that the bond was worthless. Consequently, this bond was not listed as it apparently had no value. Subsequently, Mrs. Wise in the appraisal division, determined otherwise.

Yours very truly,

/s/ Charles B. Sullivan, Jr.

* * *

[Filed Feb. 6, 1964]

[Plaintiffs' Exhibit No. 6B]

	No.	Share
Jahnemannville Corp.	603,730	25"
" " Corp.	602,566.4	70"
Langston Industries Inc.	F 23611	1"
Sperry Rand Corp.	601,160	1"
Pot. Elect. Power Co.	609,575	25"
A.T. & T.	L.A. 11426	1
	N 5355 11	3
	L.A. 9190	1
	L.A. 9201	1
	D 36 1255	
A.T. & T.		

H Bond Ltd. (1000) in 1746/60
 under a grant 105430/24 5000

Banco. Mont. Am. Bank		
Heath's and Belp. Assoc.	(370)	1,100.15
Equitable Corp. of N.Y.	5-1421	1,100.15
Am. Bldg. Assoc.	141,744	1,100.15
Progressive Bldg.		
Mont. Bldg. Assoc.	5,52566	2,213.45
Interstate Bldg. Assoc.	F 57111	1,651.27
Am. Security Bldg.	79.8	2,143.24
Riggs Bldg.	22441	1,607.63
Prudential Bldg. Assoc.	94-194	5,631.39
Leila		
Colanese	1-103/20	4.50

Bor 6207 Am Sec 70

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[Filed Feb. 5, 1964]

PLAINTIFFS' EXHIBIT NO. 7

January 10th, 1955
2707 - Woodley Road, N.W.
Washington, D. C.

To Whom It May Concern

I wish that Mr. James F. Bird and wife, take charge of my body and affairs at time of death until my Lock Box shall have been opened for further instructions.

First I desire that I shall be fully clothed in underwear & that a new dress or shroud be purchased of a medium blue shade - that no jewelry shall be put upon my body, that red rose-buds with asparagus vine be put in my hands. Funeral service shall be held at S. H. Hines Funeral Parlor and I especially request that while the services are in progress that the room be well lighted.

From there to Shreve Burial Ground in Ohio.

/s/ Laura L. Jeffords

This is in my own
handwriting

L.L.J.

HOPKINS CHART BOOK

Registered U. S. Patent Office

Temperature, Bedside Charts and Bill Forms

Designed by Margaret D. Hopkins, R. N., Graduate of The Roosevelt Hospital School of Nursing

Published by THE HOPKINS CHART COMPANY, INC.
Box 125, Grand Central Annex, New York, N. Y.

Distributed by
Eugene B. Baehr & Sons
251 Fourth Avenue
New York 10, N. Y.

BEST COPY AVAILABLE
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BEDSLEY

Mrs. Tracy Jeffords
W. H. Jeffords
Dec 21 1884
Ad 2-2347

Dr. J. H. Williams
C. 4-1128

Am
8 00 99 72 30

Booce

Wm 99 68 18 Crab cake 55
toas 55 slice
top. oe mustard

Wm 97 60 16 Beef cake
corn bread
apple sauce 2000
1/2 B. A. squash

7 00

Aminophyllin False sluggish
(eye) tab. it Eye sight very poor.
Ter. Tra. Tab. 55 Six in chair 500 1/2
W. H. J. 1917 walked for ten min.
Cleansing bath Very unsteady on
and body massage feet.

W. H. J. 1917 Complains of stoppage
in throat.
Eat very little lunch.
Nauseous. Spit up
phlegm.
Small formed stools
Eat good dinner and
Aminophyllin enjoyed it.

Ter. Tra. Tab. 55
It is greatly improved
His even. vid. stronger
and more steady on
feet.

W. H. J. 1917
2 Aminophyllin 37 1/2
of 6h
W. H. J.

BEDSIDE CHART

Mrs. Tracy LeFlore
 1969
 W. Hochampstead Rd.
 Ad. 2-2847
 Doctor Alfred Niehuysen phone 04-1128
 Night Nurse

Medication & Treatment		Examination	
15	8 AM	Orange 300cc 2.13. 1-99 Xoax, grapes Coyee 300cc	Peritrate tabs Aminophyllin reported. Sleep well. A.M. care
9	9:24 26	Sherbyl 10:30 2 12:30 9:24 34 Custard	C.V. Dayling Tulaz, regular but last. Niehuysen called dermatoma Casting unsteady Mentally clear.
	4 PM	Equimilk 4cc Syntherru 1:30 9:2 8 2.3 Berries. Custard Apricot neck	C.V. Dayling Body massage L.M. care Peritrate tabs Aminophyllin
14	9:37 24	Straubner Custard.	"Reacts. high C.V. Dayling 3.10 reported "frequent urinations." Aminophyllin 3.10 Peritrate tabs

BEDSIDE CHART

Patient Mrs. Tracy
 City Nurse W. H. Chamberlain
 1904

Ad 2-23-47

Peritrate tabs
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BEDSIDE CHART

Patient: Mrs. Isaac Leffords
 Day Nurse: Xochampet RV, phone Ad. 2-2847

Doctor: H. Krehwinc
 Night Nurse: phone

Dex

21	NRM	11 " 98 90 126 Mushroom S. Egg Custard 100% slice	Kondremulate Food enjoyed. 2tbls. C.V. Jauling Body massage Slept 2 hrs without Aminophyllin tabs walking up. Peritrate tabs
22	11:00 98 96 32 127.	11:00 90 30 300cc Muffin 1/2 Rice, meat Veg. soup Banana Pearapple 300cc	Kondremulate High brown formed stool (small) Breathing difficult. Pulse fast and shallow, intermittent. C.V. Jauling Body massage Slept 1 1/2 hrs. Rise up in chair Thr. Aminophyllin tabs difficult Peritrate tabs
23	86 28	86 28 300cc	Body massage Slept 1 1/2 hrs. Rise up in chair Thr. Aminophyllin tabs difficult Peritrate tabs
24	86 28	86 28 300cc	Body massage Slept 1 1/2 hrs. Rise up in chair Thr. Aminophyllin tabs difficult Peritrate tabs
25	86 28	86 28 300cc	Body massage Slept 1 1/2 hrs. Rise up in chair Thr. Aminophyllin tabs difficult Peritrate tabs
26	86 28	86 28 300cc	Body massage Slept 1 1/2 hrs. Rise up in chair Thr. Aminophyllin tabs difficult Peritrate tabs
27	86 28	86 28 300cc	Body massage Slept 1 1/2 hrs. Rise up in chair Thr. Aminophyllin tabs difficult Peritrate tabs
28	86 28	86 28 300cc	Body massage Slept 1 1/2 hrs. Rise up in chair Thr. Aminophyllin tabs difficult Peritrate tabs
29	86 28	86 28 300cc	Body massage Slept 1 1/2 hrs. Rise up in chair Thr. Aminophyllin tabs difficult Peritrate tabs
30	86 28	86 28 300cc	Body massage Slept 1 1/2 hrs. Rise up in chair Thr. Aminophyllin tabs difficult Peritrate tabs

BEDSIDE CHART

Patient Tracy Jeffords Doctor A. Richwine 'phone 01-41123
 Day Nurse W. Kechamp 'phone Ad. 2-2347 Night Nurse Ad. 2-2347 'phone

Time	Temp.	Pulse	Resp.	Food	Fluid Intake	Urine	Stools	Medication & Treatment	Remarks
23 11 00	98	82	26	Meat B.			1 stool		Pulse Vol. improved
12 00				spinach s. potato 1/4 cranberries					
2 00	98	80	28	Beef Bouf and jelly		1	1	U1-Hauling Dem. Gormed lax grow stool (yad.) X. more comfortable. Complains of being warm Sluggish.	
4 00	99	76	28	Vegetable beef soup		1	1	U1-Hauling Complains of being warm Sluggish. Moved to hospital bed.	
6 00	99	80	26	Cranberries				U1-Hauling Complains of being warm Sluggish. Moved to hospital bed.	
7 00	99	80	26					U1-Hauling Complains of being warm Sluggish. Moved to hospital bed.	
24 11 00	98	82	24			1	1	U1-Hauling Complains of being warm Sluggish. Moved to hospital bed.	
1 00				Celery soup Xmas (Yad.) Orange fruit 1/2 (Yad.)		1	1	U1-Hauling Complains of being warm Sluggish. Moved to hospital bed.	
5 00	98	80	26					U1-Hauling Complains of being warm Sluggish. Moved to hospital bed.	
7 00								U1-Hauling Complains of being warm Sluggish. Moved to hospital bed.	

Doctor's Orders

BEDSIDE CHART

Patient Mrs. Tracy Jeffords Doctor H. H. Hinchman 'phone 07.4-1123
 Day Nurse W. Rachambeck Night Nurse Mrs. Williams 'phone 2-2347
 Ad. 2-2347

Order	Time	Temp	Pulse	Res	Food	Medication & Treatment	Remarks
25	11 AM	98.8	84	26		Boric Acid com. large semi formed brown compresses to eyes 1-15aying i Condition improved this P.M.	up
	12 Noon				Chicken S. Roast Quacks Pineapple Ramb. chop B. potato B. orange juice	Electric massage regular. Resp. quick P.M. Care and regularity. Boric Acid Urinations frequent. Compresses Meats enjoyed. Applied to eyes. Right arm disced to head flex 2 hrs this P.M. "Habit brown semi formed stool (large) Had a good Electric massage (Vib.) Pulse and Resp. entire body (Vib.) regular. Boric Acid compresses Small dark brown applied to eyes. formed stool.	
26	11 AM	98.8	84	26		Co. Geelery Eq. Custard	
	2 PM						
	3 PM	98.8	80	24	Baked melon green lima beans Stewed Tomatoes	Massage (Vib.) Had a good day. Did P.M. Care not sleep, but rested and B.P. 160 over 100 exers. bed legs and arms. Can turn body with less greater ease.	

Doctor's Orders

BEDSIDE CHART

Patient Mrs. Tracy Clifford Doctor W. Richwine Phone 014-1128
 Day Nurse W. Buchanan Phone Ad 2-2347 Night Nurse Mrs. Timmon

Order	Time	Temp	Pulse	Respirations	Food & Drink	Urine	Stools	Nursing & Treatment
27	11 AM	98.2	92	22		1		Body massage (Vib.) and exercises
	12:30				Soup, rice custard	1		Mr. Richwine visited. Blood test, 160/100
	2 PM	98.8	86	26	toast, lurken stuffing (bread)	1	1	Constipated stool. Sleep one hour.
	8 PM	98.2	82	26	crumbies brockley custard			Body massage had a good day. (Vib.) Exercises. He meals without ill - laylin at coughing. Aminophyllin tab
28	6 PM	98.2	86	24			1	Body massage. Sit on side of bed and exercises for five min. Upright - feet dangling. B. stool
	7 PM	98.2	82	24	B. fish B. potato steamed tomato 1/2 pear.		1	ill - laylin. Small formed B. stool Aminophyllin. Did not sleep any during day but expressed joy.

BEDSIDE CHART

014-1128

Patient Mrs. Tracy Jeffords
Day Nurse W. Hochgambler
1939
Ida-2347

A. Kiehwine
Mrs. Limmon

Oct 29	10 AM 98 86 92	Chicken N. soup, toast Jcino.	2	Boric Acid "Urinated frequently compresses during night applied to eyes 2 stools, formed, dark brown. Did not sleep any during night.
30	98 88 86		1	Body massage Mrs. Limmon's report. (Vib) Muscles relaxing
30	98 88 86	W. potato Turkey cranberries spinach pear	1	Lunch enjoyed. Can grasp bottle right hand and raise it up. U1-Jayling large dark brown Uminophillia normal stool SIT on side of bed for five mins. - then tired. Eat very little dinner. Sleep two hrs. this p.m.

BEDSIDE CHART

Patient Mrs. Iracuen de Sants Doctor A. Kichwine phone _____
Day Nurse M. Koe ngamben Night Nurse _____ phone _____
Ad. 2-2847

[illegible]

BEDSIDE CHART

Patient Mrs. Irene Richards Doctor V. Hichwinc 'phone 4-1123
 Day Nurse L. Hochberg 'phone Ad. 2-2847 Night Nurse _____ 'phone _____

Time	Temp	Pulse	Res	Food	Fluid Intake	Urine	Stools	Medication & Treatment	Remarks
Oct. 31	7/30 98.2	89	28			1		01-Hyalinat Aminophyllin tab	Px. had a good day Slept two hrs.
Nov. 1	7/30 98.8	86	28	Beef noodle soup, toast, Jello		1	1	A.M. Care	Pulse much stronger. Resp. heavy. Good night reported. Slept well. Large brown formed stool Px. slept 1 1/2 hrs.
3/30 100	30			R. Lamb sweet potato B. pear. pres. toast		1	1	Exercises. Body massage Electric (Liba) Six up in morning G.M. Care.	Had a good day.
Nov. 2	11/30 98.9	96	28	C.M. soup toast, Jello		1		01-Hyalinat Aminophyllin tab	
11/30 100	29							Body massage Electric Liba	Had a good day
11/30 100	29					1	1	Six up in evening Cybed 15 min	Pulse weak Large dark brown formed (natural) stool
7/30 98	90	28							

Doctor's Orders

BEDSIDE CHART

Patient Mrs. Irene J. Edwards
 Day Nurse W. Hochambauer, M.D. phone 2-2847
 Doctor W. Hochambauer, M.D. phone 014-1123
 Night Nurse _____ phone _____

Time	Temp	Pulse	Resp	Food	Fluid Intake	Urine	Stools	Medicine & Treatment	Remarks
Nov. 3	98.8	82	28	Tomato soup Toast, pear and small pieces of cake.		1	1	11-11 a.m. at Winnaphill lab. Q.M. Care	Pulse weak and thready Good night reported Frequent urinations Water forced. Urine scant and dark yellow, odor. Large dark brown formed stool
3pm	98.2	89	28					Cleansing bath and body massage	
5pm				Beef steak (ground) potato, cabbage muffin (corn)				Exercises. 11-11 a.m. at Winnaphill lab.	Px. had a good day. Six on side of bed for fifteen minutes
6:45	98	102	30						
4	97.9	94	28	Chicken soup Toast, jello.		1	1	A.M. Care. Exercises Six on side of bed for 20 mins.	Pulse weak and thready. Resp. labored.
9:30	98	92	28	Bed cake (134) lima beans (21)		1	1	Body massage F.B. 1 Exercises	Large brown formed stool. Urine lighter in color, musty odor. Had a good day.
5:30									
7:15	98	90	26	squash (147) Ice cream					

BEDSIDE CHART

Patient Mrs. Trau, 1600 Doctor V. Richwine phone OL 4-1123
 Day Nurse W. Hochambach phone AD 2-2347 Night Nurse _____ phone _____

Time	Temp.	Pulse	Resp.	Food	Fluid Intake	Urine	Stools	Medication & Treatment	Remarks
1/5 9:00 AM	98	92	28			✓		Cleansing bath. Good night reported. and A.M. care. Pulse slightly stronger.	
12:00				Vegetables, toast, jelly		✓		U-Jayline at 11:00 AM. Care. Pulse. labored. Urine clear.	
1:00 PM	98	86	24	Chicken cooked celery carrots, rice, strawberries				Sit up on side. Bed for thirty mins. Exercise. Sleep two hrs.	
5:00 PM	98	102				✓	✓	U-Jayline at 11:00 AM. Care. Pulse. labored. Urine clear.	
9:00 PM	98	102				✓	✓	Back rub at 8:00 PM. Care. Pulse. labored. Urine clear.	
11:00 PM	98	102				✓	✓	Back rub at 11:00 PM. Care. Pulse. labored. Urine clear.	
1/6/59 2:00 AM	98	102				✓	✓	Back rub at 2:00 AM. Care. Pulse. labored. Urine clear.	
4:00 AM	98	102				✓	✓	Back rub at 4:00 AM. Care. Pulse. labored. Urine clear.	

Doctor's Orders

1/10
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[Filed September 30, 1963]

VERDICT AND JUDGMENT

This cause having come on for hearing on the 16th day of September, 1963, before the Court and a jury of good and lawful persons of this district, to wit:

Margaret G. White	Mary V. Roof
Wallace H. Meyers	Verna R. Lewis
William H. Rollins, Sr.	Donna J. Taylor
Malchi D. Bolden	Juanita E. Stewart
Bernice E. Kinsey	Grace I. Proctor
Stanley R. Mayes	Francis D. Sembly

who, after having been duly sworn to well and truly try the issues between James F. Bird and Jerome Keith, Co-executors of the Estate of Laura L. Jeffords, Deceased 3rd party, plaintiffs and Harlow C. McCord 3rd party defendant and after this cause is heard and given to the jury in charge, they upon their oath say this 30th day of September, 1963, that they find for the 3rd party defendant against said 3rd party plaintiffs, by direction of the Court.

WHEREFORE, it is adjudged that said 3rd party plaintiffs take nothing by this action, that said 3rd party defendant go hence without day, be for nothing held and recover of 3rd party plaintiffs his costs of defense.

HARRY M. HULL, Clerk

By: /s/ Dean F. Miller
Deputy Clerk

Judge David A. Pine,
Presiding

[Filed October 4, 1963]

VERDICT AND JUDGMENT

This cause having come on for hearing on the 16th day of September, 1963, before the Court and a jury of good and lawful persons of this district, to wit:

* * * * *

who, after having been duly sworn to well and truly try the issues between Estelle S. McCord, plaintiff and James F. Bird, Individually and as Executor of the Estate of Laura L. Jeffords, deceased and Jerome Keith, as Executor of the Estate of Laura L. Jeffords, deceased, defendants, and after this cause is heard and given to the jury in charge, they upon their oath say this 2nd day of October, 1963, that they find the issues, relating to the securities allegedly delivered by her to James F. Bird, in favor of the plaintiff.

WHEREFORE, it is adjudged that said plaintiff recover of the said defendants the securities, together with costs.

HARRY M. HULL, Clerk,

By: /s/ Dean F. Miller
Deputy Clerk

Judge David A. Pine,
Presiding

[Filed October 4, 1963]

VERDICT AND JUDGMENT

This cause having come on for hearing on the 16th day of September, 1963, before the Court and a jury of good and lawful persons of this district, to wit:

* * * * *

who, after having been duly sworn to well and truly try the issues between Estelle S. McCord, plaintiff and James F. Bird and Jerome Keith, defendants and executors of the Estate of Laura L. Jeffords,

deceased, and after this cause is heard and given to the jury in charge, they upon their oath say this 2nd day of October, 1963, that they find the issues aforesaid in favor of the plaintiff in the first Counterclaim of the Executors against Estelle S. McCord for two \$5,000 Government Bonds.

That they find the issues aforesaid in favor of the plaintiff in the second Counterclaim of the Executors against Estelle S. McCord for \$1220.00 in cash.

That they find the issues aforesaid in favor of the plaintiff in the third Counterclaim of the Executors against Estelle S. McCord for the cedar chest and contents containing silver flatware, service piece, papers, linens, etc.

That they find the issues aforesaid in favor of the plaintiff in the fourth Counterclaim of the Executors against Estelle S. McCord for two alleged rings, one a three-stone diamond ring and the other a garnet ring.

That they find the issues aforesaid in favor of the Executors in the fifth Counterclaim against Estelle S. McCord for one sunburst diamond pin.

WHEREFORE, it is adjudged that said plaintiff recover of the said defendant-Executors the items contained in the said Counterclaims, numbers one (1) through four (4), that said defendant-Executors recover of the said plaintiff the item contained in the said Counterclaim Number 5.

That costs be assessed against the defendant-Executors herein.

HARRY M. HULL, Clerk

By: /s/ Dean F. Miller
Deputy Clerk

Judge David A. Pine
Presiding

[Filed October 8, 1963]

MOTIONS OF DEFENDANTS AND THIRD PARTY PLAINTIFFS: (1) For Judgment Non Obstante Veredicto As to Complaint of Estelle S. McCord, Plaintiff, V. James F. Bird, Individually, and James F. Bird and Jerome Keith, Executors of the Estate of Laura L. Jeffords, or in the Alternative for a New Trial, and (2) For Judgment Non Obstante Veredicto Upon the Total of Counterclaims of the Executors in Claim by Them Against Estelle S. McCord, Plaintiff, or in the Alternative for a New Trial, and (3) For An Order Vacating and Setting Aside the Verdict Directed in Favor of Harlow C. McCord, Third Party Defendant, in the Matter of the Third Party Complaint of the Third Party Complaint of James F. Bird and Jerome Keith, Executors, Against Said Harlow C. McCord, Third Party Defendant.

(1) As to the Complaint of Estelle S. McCord

Come now James F. Bird, Individually, and James F. Bird and Jerome Keith, Executors of the Estate of Laura L. Jeffords, the above-named defendants and third party plaintiffs, by their attorney, Herbert P. Leeman, and move the Court to enter judgment non obstante veredicto in their favor against Estelle S. McCord, plaintiff, upon her complaint in this action or in the alternative for a new trial for reasons that:

1. Court records, and the records in the Inheritance Tax Division of the District of Columbia Government clearly show that the stocks claimed could not have been in the cedar chest.

2. The alleged transaction upon which executors were sued arose during lifetime of Laura L. Jeffords and plaintiff's claim against the executors of the estate of the deceased Laura L. Jeffords, and each and every element of such claim lacked record or memorandum in writing as required by D. C. Code, Title 12, sec. 302 to sustain such claim against the executors or administrators upon transactions arisen during the lifetime of their decedent.

3. Plaintiff failed to establish alleged gift of the chest.

4. Plaintiff failed to establish alleged gift of alleged contents of the chest.

5. The Jury were permitted, erroneously, to speculate and pro-

ceed upon conjecture in place of required definite factual proof.

6. The verdict is contrary to the factual evidence.

7. The verdict is contrary to the law.

8. The Court erred in requiring the Jury to continue deliberation after receiving a written notice from the Foreman that the jury, after long deliberation, was unable to agree.

(2) As to the Counterclaim

The defendant Executors, James F. Bird and Jerome Keith, by their attorney, Herbert P. Leeman, move the Court to enter judgment in their favor against plaintiff, Estelle S. McCord, for their total counterclaim in this action, or in the alternative to grant a new trial, for reasons that:

1. The same factual and legal establishments which brought verdict in favor of the executors for return of the sunburst diamond pin from plaintiff were more than equally extant and applicable in the claims of the executors additionally enumerated and demanded in their counterclaim against the plaintiff; and verdict of the Jury, if understood by the Jury, to be in any sense consistent with the evidence and the law and facts rightly applicable, must be taken and made applicable to the total of items of defendants' claim asserted in their counterclaim, unsegregated from the sunburst diamond pin item returned to the Executors by Jury's verdict.

2. The instructions of the Court to the Jury were erroneous and confusing.

3. The verdict is contrary to the law in so far as it fails to allow defendants recovery upon all items of their counterclaim, including the aforesaid sunburst diamond pin.

4. The verdict is contrary to the evidence.

5. The Court erred in requiring the Jury to continue deliberations after receiving a written notice from the Foreman that the Jury, after long deliberation, was unable to agree.

(3) As to the Third Party Complaint

The Third Party Plaintiffs, Executors of the Estate of Laura L. Jeffords, by their attorney, Herbert P. Leeman, move the Court to enter an Order vacating and setting aside the directed verdict against them in favor of the Third Party Defendant, Harlow C. McCord, upon issues of the Third Party Complaint, for reasons that:

1. The evidence adduced at the trial was sufficient to establish a prima facie case against said Third Party Defendant, Harlow C. McCord.

Herbert P. Leeman, Attorney for
James F. Bird, Individually, and
James F. Bird and Jerome Keith,
Executors of the Estate of Laura L.
Jeffords

* * *

[Certificate of Service]

POINTS AND AUTHORITIES

(1) As to Complaint of Estelle S. McCord

1. The motion of the defendants, the executors and James F. Bird, individually, for judgment non obstante veredicto or in the alternative for a new trial should be granted, as said defendants are now in a position to present the Record of the Representative of the Inheritance Tax Department of the District of Columbia Government, and records made by representative of the Register of Wills of the District of Columbia at the American Security and Trust Company, when the safe deposit box of the deceased Laura L. Jeffords was examined in their presence for the first time after the death of said decedent. Their records show that the stocks of Johns-Manville Corporation, Lanston-Industries, Incorporated, Sperry-Rand Corporation, Potomac Electric Power Company, and American Telephone and Telegraph Company enumerated in claim of plaintiff Estelle S. McCord and claimed by her

to have been in the cedar chest were in fact in the safe deposit box and could not have been a part of the contents of the cedar chest. These officials and their records will be produced at the hearing of this Motion. It was overlooked at the trial that the inventory admitted in evidence stated that these stocks were at the American Security and Trust Company.

2. The alleged transactions on which the defendants, the executors and James F. Bird, individually, were sued, claim, first, a gift of the cedar chest and its contents to plaintiff from Laura L. Jeffords and, second, a conversion of part of its contents, the aforesaid stocks, from plaintiff, by taking them back to the deceased Laura L. Jeffords' home four days before her death and thereafter placing said stocks among the assets of the deceased Laura L. Jeffords' estate. This state of the Complaint necessarily calls into consideration the provisions of D. C. Code, Title 12, sec. 302, which in part here germane says: "No action shall be brought whereby to charge -----any person-----upon any contract or sale of lands, tenements or hereditaments, or any interest in or concerning them, unless the agreement upon which the action shall be brought, or some memorandum or note thereof, shall be in writing." (underscore supplied) And here, first, respecting the alleged gift, there is no writing whatsoever, and, secondly, respecting the return of the alleged stocks to Laura L. Jeffords' home (the plaintiff then in company with James F. Bird in plaintiff's automobile operated by plaintiff) there is no writing whatsoever; nor is there claim in writing asserted by or in behalf of said plaintiff until more than six months after death of said Laura L. Jeffords, when she filed and served the complaint herein without knowledge or description of the stocks or items allegedly converted from her. ("Hereditaments" in cases cited in 19 Words and Phrases pp 394-395, includes stocks, and anything which may be inherited, real, personal or mixed.) The plaintiff's alleged gift and the alleged transaction which resulted in alleged conversion of the such alleged donation do not have sustenance of essential evidence whatsoever. Plaintiff's six month delayed and round-about conjectures have been put aside in

this District by Code law provision and by statute in many other jurisdictions. Illustrative of the situation in the case at bar is the one reported in *Re Stahl's Estate*, 27 N. E. 2d 662, and where in the court's opinion at pages 666-667, it is recited:

'No witness testified that the securities claimed by Marie Burk were among those in the decedent's valise prior to his death.... The final link in the chain of evidence which was necessary to connect the securities claimed by Marie Burk in her petition filed more than a year after Stahl's death to the unknown contents of his valise was missing. Only by Marie Burk could this link be supplied. She could not testify directly that the securities claimed by her were in Stahl's valise on the day he died and prior to the time of his death. However, by offering to testify that the valise in question was continuously in her possession from the time of his death, she proposed to accomplish the same result. The admission of her evidence in this regard would by indirection bring into the record testimony as to what occurred before Stahl's death -- the very thing that section 2 of the Evidence Act seeks to prevent. The purpose of her proffered testimony was unquestionably to identify the contents of Stahl's valise prior to his death as the very securities which she claimed in her petition over a year later, and the court properly excluded such testimony as coming within the statutory prohibition

'As heretofore stated, the testimony of Marie Burk in the instant case was properly excluded and in the absence of any testimony as to the identity of the securities, which it is claimed were given her by the decedent, the trial court was bound to direct a verdict against the petitioner."

The testimony of Charles B. Sullivan, Jr., former attorney for the defendants, to the effect that on the 29th day of December, 1959, immediately after James F. Bird's return from Shreve, Ohio, and burial there of Mrs. Jeffords, he, at defendant Bird's apartment in Washington,

D. C., made a listing on a sheet of paper of items of assets of Laura L. Jeffords' estate which were then and there turned over to him and which included stock certificates of Johns-Manville Corp., Lanston Industries, Inc., Sperry-Rand Corp., Pot. Elect. Power Co., A.T. & T., H Bond, U. S. In letter by said Sullivan, dated Jan. 9, 1961, to attorney Robert M. Gray, representing plaintiff, he, Sullivan, transmits an alleged copy of such aforesaid listing testified to by him as being made Dec. 29, 1959, as aforesaid, and refers to items listed thereon "acquired with the second group of assets." The aforesaid list is in evidence, marked PLF's EX 11, and it was read to the Jury along with the aforesaid letter by said Sullivan to said Gray, dated Jan. 9, 1961. It is to be noted on such PLF's EX 11, on the left-hand margin, under the notation of the aforesaid enumerated stocks and under written notation of "H Bond U. S. (1000)" a line is drawn, and that immediately over it is written "Am Sec & Trust". Said Sullivan's letter recites that the first eleven (11) items, through the H Bond in amount of \$1,000.00 were turned over to him with unassorted papers delivered to him in the early part of the day, December 30, 1969 (meaning 1959); that said papers had been assembled from many points and "neither Mr. Bird nor I have any knowledge that any of the securities were ever in the cedar chest."

It is rather inconceivable how a listing given in evidence as being made Dec. 29, 1959, could include items which were not located or otherwise in evidence until later date. Even though such conjecture might be speculated, it may not be considered evidence of "gift" of specified items or of "conversion" of specified items on transactions between the plaintiff and Laura L. Jeffords during lifetime of said Laura L. Jeffords for which said Laura L. Jeffords' successors, these defendants, may be charged.

3. The plaintiff failed to establish a gift of the chest. By plaintiff's testimony there had been discussions between her and Mrs. Jeffords about the said chest and its contents and about sometime "sorting out" its contents, which discussions came to naught. Then, coming down to

Dec. 17, 1959, it was related in testimony of plaintiff that Mrs. Jeffords, aroused from a stupor and said to plaintiff: "You thought I was dead, didn't you?" Now take that chest. Get it out of here. If you don't get it out of here before I die you won't get it. The witness Michalka testified that she arrived to take care of Mrs. Jeffords Dec. 17, 1959, and that Mrs. Jeffords first spoke of her "dimples" and then told her that she wanted Mrs. McCord to take the "chest and contents" (just as in the language of Corpus Juris) before she (Mrs. Jeffords) died. But the chest was not taken until Dec. 19, 1959, and according to other testimony by Mr. Bird, who had power of attorney, it was taken for safe keeping in plaintiff's nearby newly acquired residence as per suggestion of plaintiff to which he gave approval. Undisputed testimony, corroborated by death certificate in evidence, was to the effect that Mrs. Jeffords had suffered from cerebral arteriosclerosis for 1-1/2 years prior to her death and had suffered cerebral thrombosis seven days before her death on Dec. 25, 1959; that Mrs. Jeffords had suffered total physical collapse before Michalka was called to lend assistance because the nursing attendant for whom she was replacement had a "slipped disc" and was then unable to move the body of Mrs. Jeffords. Also it was undisputed testimony that Mrs. Jeffords' whole right side had been paralyzed for a considerable while before her death and that her face was distorted and her speech made difficult to understand, before her final cerebral thrombosis of seven days duration before her death. So here we have a little woman in cerebral difficulties for a long 1-1/2 years, on the continuing down-grade, in terminal illness, allegedly making gifts of unknown assets to person in confidential relationship to her on Dec. 19, 1959, at least two days after she had passed from any fair semblance of consciousness. There was testimony by plaintiff that Mrs. Jeffords' mind was clear to the last and that plaintiff and Mrs. Jeffords communicated with one another by questions being asked by plaintiff with request that Mrs. Jeffords answer by "blinking" her eyes and that plaintiff gathered information from Mrs. Jeffords in

this manner respecting wishes of Mrs. Jeffords as to distribution of her rings. The doctor's prescription of "demerol" was stated as being for "severe pain" of his patient, Mrs. Jeffords. Said doctor signed the nursing chart on which Michalka and another nurse had noted demerol injections as having been given Mrs. Jeffords ----- and these injections at time and times when Mrs. Jeffords was totally unconscious, next to death's door. Such death-bed gifts are not sustainable. *Kling v. McCabe*, 36 Fed. 2d 337; *Casey v. Topliffe*, 65 App. D. C. 100, 82 Fed. 2d 543; *Myers v. Tschiffely*, 64 App. D. C. 17, 73 Fed. 2d 657, *Johnson v. Goodballet*, 46 F 2d 934 - 938 *Stahl's Estate*, 27 N. E. 2d 662.

4. The plaintiff failed to establish the alleged gift of the alleged contents of the chest. Some of the contents of the chest necessarily belonged the personal needs of Mrs. Jeffords and to the business of Mrs. Jeffords' successors. Plaintiff, according to her own testimony did not know what were the contents of the chest at time of its alleged delivery to her; she did not know about the \$100.00 in one dollar bills; did not know about the \$120.00 in bill fold; did not know about stocks which she later alleged (more than six months later) had been given to her among the contents of the chest, but as to which she had no identification. Her proof as to acceptance of stocks of unidentified name and unspecified value at the time she filed her complaint some six months after alleged delivery of same to her remains to this time mere unmaterialized conjecture. The circumstances surrounding the alleged gift of the stock refutes the idea of "gift" of the chest and its contents where the items of its contents were necessarily portionable and divisible according to the testimony of the plaintiff in this case.

5. The Jury had before them only speculation added to speculation for determination of any issue of this case against the defendants.

6. The verdict is contrary to the evidence.

7. The verdict is contrary to the law.

8. The Court erred in requiring the Jury to continue deliberation upon the case after receiving written notice from the Foreman that the

Jury was unable to agree. It appears probable that members of the Jury, due to the length of time they were confined to the jury room, the so-called Allen charge given them by the Court after they had failed to agree and had so announced, the lateness of the hour, with prospect of being held much later or, perhaps, overnight from their homes, surrendered their independent judgment in the matter.

(2) As to the Counterclaim

1. Defendants reiterate this paragraph (1) as set forth in their motion.

2. The instructions of the Court to the Jury were unclear and erroneous and confusing. The defendants were entitled to have prayers submitted by them allowed by the Court, allowance of prayers which defined the prescribed duties of executors, and which placed before the Jury perspective of death-bed gifts as narrated by courts in their decisions and as the Jury might see fit to make applicable in the case before it in light of the evidence.

3. The verdict is contrary to law in so far as it failed to allow the defendants recovery upon all items of their counterclaim, and especially since items claimed upon by defendants were, over and above the said sunburst diamond pin, more firmly supported by law and evidence than in the matter of such said sunburst diamond pin.

Take the matter of the two five thousand dollar U. S. Government bonds: The plaintiff in her answer to defendants' claim thereon stated:

"The plaintiff says she has in her possession and has had in her possession for some time prior to the death of Laura L. Jeffords two U. S. Government bonds, principal amount of \$5,000.00 each, that she acquired from Laura L. Jeffords pursuant to an agreement for a valuable consideration and is the owner thereof."

On this matter of alleged "agreement" testimony was had from plaintiff that she had purchased such said bonds by giving Mrs. Jeffords her \$25.00 check in September of 1959, and had agreed with Mrs. Jeffords to apply the money to take care of Mrs. Jeffords in case anything happened to her; that none of it was applied to Mrs. Jeffords'

expenses of last illness of burial; that coupons from such said bonds were to belong to Mrs. Jeffords so long as she survived; that a certain \$82.00 coupon clipped during Mrs. Jeffords' lifetime was clipped and applied to plaintiff's accounts for a certain gift to member of her family; that, notwithstanding power of attorney outstanding from Laura L. Jeffords to James F. Bird, to have charge of all of Mrs. Jeffords' moneys and accounts, which was known by and ostensibly acquiesced in by plaintiff during time of Mrs. Jeffords' last illness, the holding of such said bonds by said plaintiff never was communicated to him, and such situation and state of facts did not come to his attention until date of taking of plaintiff's deposition on July 7 1960. It appearing that the aforesaid \$25.00 check of September, 1959, from plaintiff to Mrs. Jeffords was "naked" as to its application and that it was not in legal sense supportive as memorandum of the allegations of agreement between plaintiff and Mrs. Jeffords (as averred in plaintiff's answer to defendants' counterclaim and sworn to by plaintiff in her deposition of July 7, 1960), thereafter, by pre-trial statement in plaintiff's behalf, plaintiff abandoned her defense of "agreement for consideration" and switched to defense of "gift". The Court at one time during the trial stated that it couldn't be an agreement. Could plaintiff or her attorneys change it to a gift? It was evident that Mrs. Jeffords had no awareness of the custody or location of those bonds at the time she provided a "power of attorney" for defendant Bird to handle her accounts and business by writing dated Oct. 16, 1959, or later on the 19th day of October, 1959, when she provided a further power of attorney to said Bird on Bank forms for the handling of her moneys in bank and when she then asked to have provision for her burial in Ohio and through Mrs. Sobel set up funds for said Bird for that special purpose. Should not the defendants have had judgment forthwith on all items of their counterclaim under the evidence? Defendants urge that the answer should be "Yes". Motion for directed verdict in their behalf should have been granted. The verdict returned by the Jury is contrary to the evidence and contrary to the law and judgment for defendants on all items of counter-

claim should be entered non obstante veredicto, or in the alternative a new trial granted.

4. As said in paragraph 3 hereof, the verdict of the Jury is contrary to the evidence as well as being contrary to the law.

5. The Court erred in requiring the Jury to continue deliberations after receiving a written notice from the Foreman that the Jury, after long deliberation, was unable to agree. It appears probable that members of the Jury, due to length of time they were confined to the jury room, the so-called Allen charge given them by the Court after they had failed to agree and had so announced, the lateness of the hour (8 o'clock p.m.), with prospect of being held much later or, perhaps, overnight from their homes, surrendered their independent judgment in the matter.

(3) As to the Third Party Complaint

1. The evidence adduced at the trial was sufficient to establish a prima facie case against the Third Party Defendant, Harlow C. McCord. It showed that said Third Party Defendant, was in concert with his wife, plaintiff herein, in all activities, respecting handling of assets of Laura L. Jeffords, that he and said plaintiff assisted one another in removal of the cedar chest from the residence of Mrs. Jeffords to residence jointly bought and owned by said plaintiff and Third Party Defendant; that they owned joint bank account, and stock; had joint safe deposit box wherein money and bonds from Mrs. Jeffords' property was placed; that they filed joint income tax returns; that they had purposed to have Mrs. Jeffords removed from her home to their nearby newly purchased and jointly owned residence for care and treatment by their doctor in her last illness in latter part of year 1959. Third party plaintiffs urge that there was sufficient evidence before the court and jury to establish a case against said Third Party Defendant as set forth in their Third Party Complaint and that the Court set aside and vacate the verdict directed in favor of the said Third Party Defendant.

/s/ Herbert P. Leeman, Attorney
for Defendants and Third Party
Plaintiffs, * * *

3

PROCEEDINGS

THE DEPUTY CLERK: Would counsel like a rule on witnesses?

MR. LEEMAN: No.

THE COURT: This matter comes before me this morning on a motion of defendants and counterclaimants and third party plaintiffs for judgment non obstante veredicto or for new trial, I guess. There is a long paragraph of what this motion is. I will read it.

"Motions of defendants and third party plaintiffs: (1) For judgment non obstante veredicto as to complaint of Estelle S. McCord, Plaintiff, v. James F. Bird, individually, and James F. Bird and Jerome Keith, executors of the estate of Laura L. Jeffords, or in the alternative for a new trial and (2) for judgment non obstante veredicto upon the total of counterclaims of the executors in claim by them against Estelle S. McCord, Plaintiff, or in the alternative for a new trial, and (3) for an order vacating and setting aside the verdict directed in favor of Harlow C. McCord, third party defendant, in the matter of the third party complaint of the third party complaint of James F. Bird and Jerome Keith, executors, against said Harlow C. McCord, third party defendant."

This is the style and title of these motions. They are filed by counsel for Mr. Bird and Mr. Keith.

4 I will hear you, Mr. Leeman. The Court will allow you a half hour to present your arguments.

MR. LEEMAN: Your Honor, I have here the witnesses that I mentioned in my points and authorities. Would Your Honor like to hear these witnesses first so that we can let them get away?

THE COURT: I never heard of taking testimony on a motion for a new trial and for judgment non obstante veredicto. You must have statements of what you think these witnesses would testify to; and if they come within the category of newly discovered evidence, that is one thing. I am not going to let you start discovery procedure after a verdict of the jury and after the trial, if that is what you have in mind.

MR. LEEMAN: Your Honor, the purpose of these witnesses is to show what the exhibits and what the actual fact was at the trial which is different from the conclusion reached.

THE COURT: You make your tender of what you think they will testify to, and I will hear Mr. Laskey to see whether he objects to hearing their testimony. This is a novel procedure to me, to start preparation of a case after trial and verdict, if that is what you have in mind.

5 MR. LEEMAN: No, Your Honor, we have had a trial; and as a result of the evidence, we show that things that were accepted as a fact are now shown to be not a fact, which is very material to the verdict.

THE COURT: Make your tender, Mr. Leeman, of what you expect these witnesses will testify to after your conference with them. I don't mean by taking their testimony. Make your tender to me of what you expect they will testify to.

MR. LEEMAN: Your Honor, what we expect to show by this evidence is that it was impossible for these securities which the plaintiff claims was in that cedar chest were in that cedar chest. We will show by these witnesses that those securities were at the American Security and Trust Company in the safe deposit box. We will show by these witnesses that that box was opened by a representative of the Register of Wills after the death of Mrs. Jeffords, a day or two, that box remained closed until about March 22nd when it was opened in the presence of a tax man from the District of Columbia and representatives of the Register of Wills and these stocks that were claimed to have been in the cedar chest were in the safe deposit box at the American Security and Trust Company and could not have under any circumstances have been in that cedar chest as claimed by the plaintiff.

THE COURT: Mr. Leeman, wasn't that evidence available to you? How can you possibly say that is newly discovered evidence?

6 MR. LEEMAN: Well, if Your Honor please, it is newly discovered evidence in this way, that we had at the trial the letter of the former

counsel, Mr. Sullivan, which we believed clearly established that there was no definite evidence as to what was in that cedar chest; and this statement that was offered in evidence of Mr. Sullivan, it wasn't brought out at the trial or wasn't observed by any of us that the notation was on there at the American Security and Trust Company. And he testified, if Your Honor please, that they were among the securities in the chest contrary to his previous letter.

THE COURT: How is it newly discovered evidence under the formula for newly discovered evidence?

MR. LEEMAN: Well, if Your Honor please, I think the Court is within its right of correcting a mistake which causes a jury to arrive at the wrong verdict. That is the law.

THE COURT: Mr. Leeman, there would never be an end to litigation if counsel could withhold available evidence, evidence which would be easily available with the exercise of diligence, wait for the outcome, and if it was adverse, start all over again. That is what you are proposing, apparently.

7 MR. LEEMAN: Not in this case, Your Honor. If we can establish that those securities were not in that cedar chest, justice demands that this error be corrected.

THE COURT: What do you say, Mr. Laskey, as to the taking of testimony?

MR. LASKEY: I have never heard of that procedure. I would agree that it is within the discretion of the Court, but I don't think the Court's discretion should be exercised in the absence of the showing of extraordinary reason for taking testimony.

The established practice in this district is to submit affidavits by witnesses showing the essential requirements of newly discovered evidence; that it is in fact relevant and material, it is in fact newly discovered, and that it probably would produce a different result.

It is not a means, as Your Honor has so aptly said, of retrying an issue that was sharply contested at the trial.

I would say further that based on the testimony at the trial, Mr. Bird himself was present at the time this so-called newly discovered evidence was available to him. He was there as were all of these witnesses. Three of these witnesses were on our witness list. They were known. The notation on the exhibit of the inventory bearing the notation at the American Security and Trust Company does not, as counsel implies, indicate that they were in the safe deposit box. They could have
8 been taken by anyone there to be appraised for the convenience of the appraisers without having to go to counsel's office.

I submit there is no purpose or basis in taking the testimony. There has been no showing that this evidence is in any way newly discovered evidence.

THE COURT: Have you any affidavits from these witnesses as to what they will testify to?

MR. LEEMAN: No, Your Honor, because they have their records. What they are going to testify to is that they were there and that they made this record; and, of course, from the American Security and Trust Company, he brings here the record of the Bank, that the only two times that that box was opened was at the time of her death when the Register of Wills took out of it the will, and the second time when the list is made of the securities in that box.

THE COURT: This is most extraordinary, Mr. Leeman.

MR. LEEMAN: This is a most extraordinary situation, Your Honor.

THE COURT: It should not have been. You had full knowledge of all these facts. Why in the world you didn't put them in evidence is beyond my comprehension if you think they are favorable to you. Are you just exploring and fishing around to find out what these witnesses
9 may testify to?

MR. LEEMAN: No, Your Honor. I have talked to these witnesses. They have the records here.

THE COURT: I know they have the records here, but are you fishing to try to find out something when you don't know what they will

testify to?

MR. LEEMAN: No, Your Honor.

THE COURT: Why don't you make an affidavit as to what they have told you they will testify to?

MR. LEEMAN: Well, we are here at the hearing, and the witnesses are here. If Your Honor wants us to continue it for us to make such an affidavit, we can do that.

THE COURT: I would like to have you make an affidavit of what you say those witnesses will testify to and an affidavit as to why that wasn't available to you before. Now, that can't take long. You can write it out in longhand on a yellow sheet of paper. I will take a one-hour recess for that to be done. We will find out about it right now.

MR. LEEMAN: Yes, Your Honor.

THE COURT: All right. Then I will have something before me.
(The Court recessed at 10:25 am. and reconvened at 11:28 a.m.)

10 THE COURT: Are you ready to proceed, gentlemen?

MR. LEEMAN: Yes, Your Honor. I want to swear to this before the Clerk. I was letting my friends have a copy of it.

THE COURT: All right. Have you had a chance to read it?

MR. LASKEY: Yes, Your Honor, I have.

THE COURT: Now, maybe I can look at it.

MR. LEEMAN: I hope Your Honor can read it.

THE COURT: Certainly. I am used to reading bad penmanship, including my own.

Now I will hear you, Mr. Laskey, if you have any opposition to the witnesses taking the stand.

MR. LASKEY: Your Honor has phrased that if I have opposition to the witnesses taking the stand.

THE COURT: Yes.

MR. LASKEY: I would not oppose that if the Court wished to hear them. I think the procedure is unique. I think that the affidavit in support of the motion for a new trial is inadequate in all of these essential respects. It affirmatively discloses that the witnesses, one, were

known to the principal defendant from the period some three weeks to three months following the death of the decedent, the last time being March 22, 1960. Mr. Bird was the executor at that time, one of the
11 executors.

Secondly, it is not a positive averment. The only passage which could be of concern is, I believe, the second paragraph, beginning, "That the witness Evelyn Weis and Clifton R. Wallace," that portion of the affidavit is clearly equivocal. It says in substance that the witnesses would produce their records, that those records would include. No where in the affidavit is a positive averment made that there would be any testimony that the subject securities were in the box. All taken together with the next paragraph, the inventory shows that those securities were appraisal at the American Security and Trust Company. There is a fatal equivocalness in connection with that affidavit.

Thirdly, there is absolutely no showing of diligence on the part of counsel.

THE COURT: I will hear what these witnesses say, Evelyn Weis and Clifton Wallace. You may put them on the stand.

MR. LEEMAN: How about the American Security and Trust Company?

MR. LASKEY: We don't dispute those facts. They were testified to at the trial.

THE COURT: The only question is, you say these witnesses will testify that the securities claimed to have been in the cedar chest were
12 in the safety deposit box.

MR. LEEMAN: That is right.

THE COURT: And you say these witnesses will so testify.

MR. LEEMAN: Yes.

THE COURT: I would like to hear their testimony.

MR. LEEMAN: Yes.

THE COURT: Then I will have to consider if they support what you think they will testify to and whether you have been sufficiently diligent in the trial of the case.

Thereupon,

EVELYN EVANS WEIS

was called as a witness for the defendants and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LEEMAN:

Q. Will you state your full name, Mrs. Weis? A. Evelyn Evans Weis.

Q. And where are you employed? A. Register of Wills, Appraisers Office.

Q. And, Mrs. Weis, on March the 22nd, 1960, did you have occasion to go to the American Security and Trust Company to examine the contents of the safe deposit box in the name of Laura L. Jeffords?

13 A. I was at the American Security and Trust, yes.

Q. And do you have your records that you made at that time?

A. I do.

Q. And is that a record of what was in the safe deposit box?

A. That I could not swear to. They were at the Bank. Whether they were actually in the box, all of them or not, I couldn't say at this time.

Q. Well, where did you make this examination? A. At the American Security and Trust.

Q. And who else was present at that time? A. Mr. Bird, Mr. Keith, Mr. Sullivan, and Mr. Wallace.

Q. And in what part of the Bank did you make this examination?

A. I couldn't swear to that now. I presume it was in one of their small rooms, but I wouldn't say. I don't have it indicated on my notes.

Q. Did you see the safe deposit box brought out? A. I don't remember.

Q. Now, Mrs. Weis, will you look at your list and tell me --

MR. LEEMAN: I want to get the names of those stocks, Your Honor.

14 THE COURT: You mean the ones on Exhibit 6-B? It is right in that file, if that is what you want. Is that what you have in mind?

MR. LEEMAN: I have them right here now, Your Honor.

THE COURT: All right.

BY MR. LEEMAN:

Q. Will you look down your list and see if you have listed 12 shares of Johns-Mansville corporation common stock? A. I have 12 shares plus other shares of Johns-Mansville.

Q. Twelve shares plus other shares? A. Plus others.

Q. Now, will you look and see if you have 15 shares of Lanston Industries, Inc.? A. I do.

Q. You do have that? A. Fifteen shares of Lanston, right.

Q. Will you look and see if you have two shares of Sperry Rand Corporation common stock? A. I have two shares and more.

Q. Two shares and more. Now, will you look and see if you have 20 shares of Potomac Electric Power Company? A. How many shares
15 did you say?

Q. I said 20 shares. A. I have that plus.

Q. Now, will you look and see if you have 36 shares of American Telephone and Telegraph Company? A. How many shares?

Q. I have 36 here. A. 36, right, I have.

Q. Now, do you have a \$1,000 United States Series H bond?

A. Series what?

Q. Series H. A. No, we don't list those.

Q. You don't list bonds because your branch is not interested in them? A. No defense bonds.

Q. And you wouldn't have the registered series B income mortgage bonds of Fort Dodge, Des Moines, and Southern Railway? A. I have two \$100 bonds of that issue.

Q. Now, Mrs. Weis, those entries are distributed in your records there, they are not all together, are they? A. No.

Q. Different places in your record? A. That is right.

16 MR. LEEMAN: You may cross examine.

MR. LASKEY: No questions.

THE COURT: Stand down. (Witness excused.)

Thereupon,

CLIFTON R. WALLACE, Jr.,
was called as a witness for the defendants and, being first duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LEEMAN:

Q. Will you state your full name, Mr. Wallace? A. Clifton
Robert Wallace, Jr.

Q. And where are you employed, Mr. Wallace? A. D. C. Finance
Office, Revenue Division, Inheritance and Estate Tax Section.

Q. Now, Mr. Wallace, do you recall going to the American Se-
curity and Trust Company on March the 22nd, 1960, to list the securi-
ties in the safe deposit box of Mrs. Laura L. Jeffords? A. I recall
going to the American Security and Trust Company. The records indi-
cate this date of March 22nd is correct.

Q. And you made a record of the securities at that time? A. I
made an inventory listing, yes, sir.

17 Q. Where did you make that list, what part of the Bank? A. It
was in a room in the Bank.

Q. Well, would that be in the area where the safe deposit vault
is? A. I believe it is on the same floor as the vault.

Q. Do you recall that you went in one of the rooms that they pro-
vide? A. Yes, I did.

Q. Now, do you recall who was present or do you have a record
of who was present? A. I have a record that was taken at that time
which should reveal those persons.

Q. Well, would you look at your record?

MR. LEEMAN: Your Honor, while he is looking at that, I neglected
to offer the records of Mrs. Weis in evidence, if that is necessary.

THE COURT: She gave the testimony.

BY MR. LEEMAN:

Q. Do you have that? A. Yes, I have.

18 Q. What does your record show as to who was present? A. Mr. Sullivan, Mr. James F. Bird, Jerome Keith, and Mrs. Weis.

Q. Now, will you look at your record and see if you have listed on there 12 shares of Johns-Mansville Corporation common stock?

A. I have two listings, one of 10 shares of Johns-Mansville Corporation and one for 2 shares of Johns-Mansville Corporation, a total of 12.

Q. Now, will you look and see if you have listed 15 shares of Lanston Industries, Inc., capital stock? A. Fifteen shares of Lanston Industries, Inc., yes, sir.

Q. And will you look and see if you have 2 shares of Sperry Rand Corporation common stock? A. Two shares of Sperry Rand Corporation is listed.

Q. And do you have a listing of 20 shares of Potomac Electric Power Company common stock? A. Twenty shares of Potomac Power Company stock is listed.

Q. And will you look and see if you have 36 shares of American Telephone and Telegraph Company listed? A. I have several entries. I have a total of 36 in all.

19 Q. Thirty-six in all. Do you have listed two \$1,000 registered series B income mortgage bonds, Fort Dodge, Des Moines, Iowa, and Southern Railway? A. Would you state that question again, sir?

THE COURT: Did you mean two \$100 bonds?

MR. LEEMAN: Excuse me, Your Honor, I was wrong.

BY MR. LEEMAN:

Q. Two \$100 4 percent registered series B income mortgage bonds? A. Yes, I have two \$100 series Fort Dodge, Des Moines, and Southern Railway series B 4 percent bonds listed.

Q. And do you have a \$1,000 United States series H bond? A. A \$1,000 series H bond is listed.

MR. LEEMAN: That is all, Your Honor.

MR. LASKEY: May I look at the list, Your Honor?

THE COURT: Yes.

CROSS EXAMINATION

BY MR. LASKEY:

Q. Your list consisting of two pages written on both sides contains a number of stocks and bonds which you examined and identifying information with respect to which you took at the American Security and Trust Company, is that correct? A. That is correct.

20 Q. And the securities about which you were asked, the Johns-Mansville two entries, 2 shares of Johns-Mansville and 10 shares of Johns-Mansville, 15 shares of Lanston Industries, Inc., the 2 shares of Sperry Rand Corporation, and the 20 shares of Potomac Electric Company, and the series of American Telegraph and Telephone Company, totaling 36, all appear at the foot of the third page of your listing in one group, is that correct? A. That is correct, sir.

Q. Can you state either from examining your list or from your independent recollection whether the particular items which Mr. Leeman asked you about came from a safe deposit box or were there in the Bank at the time you examined them? A. The only thing to which I could state, sir, in answer to your question is that they were there at the time that the inventory was made.

MR. LASKEY: Thank you. I have no further questions.

MR. LEEMAN: That is all.

THE COURT: Stand down. The witnesses are excused.

(Witness excused.)

MR. LEEMAN: Your Honor, before the bank witnesses leave, their records that one of them has here will show the fact that that box was only opened on two occasions.

THE COURT: I think Mr. Laskey stipulated to that.

MR. LASKEY: I did, Your Honor.

21 MR. LEEMAN: I wanted that to appear in the record.

THE COURT: All right. Is there anything further now in the way of witnesses?

MR. LEEMAN: Not in the way of witnesses.

THE COURT: I will hear your argument. Each side will be limited to a half hour.

File this affidavit.

MR. LEEMAN: Your Honor, may we make up a copy of that when we get through here?

THE COURT: Certainly. It is a public record. You may have access to it. It will be placed in the file.

MR. LEEMAN: Your Honor, this motion is in several parts, and the first part deals with the complaint of Estelle McCord, and the points that we make are that the court records and the records of the Inheritance Division of the District of Columbia Government clearly show that the stocks claimed could not have been in the cedar chest.

Second, the alleged transaction upon which the executors were sued arose during the lifetime of Laura L. Jeffords and plaintiff's claim against the executor of the estate of the deceased, Laura L. Jeffords, and each and every element of such claim lacked record or memorandum in writing as required by the D. C. Code, Title 12, Section 302, to sustain such claim against the executors or administrators upon transactions arising during the lifetime of their decedent. The
 22 plaintiff failed to establish the alleged gift of the chest. Plaintiff failed to establish alleged gift of the alleged contents of the chest, and the jury were permitted erroneously to speculate and proceed upon conjecture in the place of required definite factual proof. The verdict is contrary to the factual evidence; the verdict is contrary to the law; the Court erred in requiring the jury to continue deliberations after receiving a written notice from the foreman that the jury, after long deliberations, was unable to agree.

Now, with respect to this item here as to the validity of the gift, I presume Your Honor is looking at Title 12, Section 302--

THE COURT: I have never been able to understand its relevancy to this case. I just thought I would look at it again. Go ahead.

MR. LEEMAN: Let me look at it.

THE COURT: Where in this does it say anything about a gift?
I would just like to have you point it out.

MR. LEEMAN: Well, charging the defendant any interest in or concerning lands, tenements, or hereditaments. Well, hereditaments--

23 THE COURT: It says, "upon any contract or sale of lands, tenements, or hereditaments." Where is there any contract or sale of hereditaments?

MR. LEEMAN: Of course, I think what brought that into it was the fact they claimed it was a contract with respect to the two \$5,000 bonds. Then they elected --

THE COURT: They claimed in the alternative, and at the trial they elected to stand on a gift.

MR. LEEMAN: Yes.

THE COURT: I put that question squarely to Mr. Laskey. He said he wanted overnight to think about it. He had overnight to think about it. The morning following he said he disclaimed any claim of anything but a gift. Now, if my recollection is wrong about that, correct me.

MR. LEEMAN: Well, that is what they claimed, but what was their evidence? And that is what we are talking about here.

And then I would like to call Your Honor's attention to that next section, 12-303. Now, you notice that section says all declarations, and it doesn't say and creations of trust. It says all.

24 "All declarations or creations of trust or confidence of any lands, tenements, or hereditaments shall be manifested and proved by some writing signed by the party who is by law enabled to declare such trust or by his last will in writing, or else they shall be utterly void and of no effect."

Now, with respect to these bonds, as a part of that complaint, if it has got to be a gift, it violates that section. It can't be a gift under her testimony. I don't know whether Your Honor has had an opportunity to read my supplemental--

THE COURT: Yes, I read it. That was the--

MR. LEEMAN: --deposition.

THE COURT: Yes. Her testimony was different from her deposition.

MR. LEEMAN: Well, that is one of the things that we urge as a basis for the judgment non obstante veredicto or for a new trial. You got that coupled with the fact that the jury didn't believe her testimony with respect to that Sunburst pin, and that is a strong element here. They are changing their position, attempting to do so from her sworn statement; and then her testimony with respect to the Sunburst pin, which by the verdict wasn't believed by the jury -- so that her testimony was unworthy by any standard of supporting a verdict for these securities and these bonds.

And further than that, they have the testimony, Your Honor, as to where these securities were -- and this is the part of the evidence that was overlooked on page 11 of this appraisement that was made, those letters at the top, all of these securities were at the American Security and Trust Company when this appraisement was made; and I
25 think Your Honor has been familiar enough with the appraisers down there that they list on these appraisements the room and the place where they make the apprisement, and all of these securities are listed as being at the American Security and Trust Company. That covers our point with respect that the verdict is contrary to the factual evidence.

And we say that it is contrary to the law, particularly with respect to that section 12-303 of the Code, that the so-called gift of these two \$5,000 bonds were in direct violation of the law.

Now, with respect to the counterclaim, our argument in favor that the counterclaim should be established is along the line that I have argued in behalf of the complaint of Estelle McCord.

The other points which will be argued with respect to each count is the fact that this jury reported to Your Honor that they were unable to agree after they had been deliberating for several hours the day

before and up until, I think it was around four o'clock that they sent the note to Your Honor that they were unable to agree; and Your Honor by sending them, these are all circumstances that would deprive each individual juror of his just opinion. There was enough difference among the members of that jury for them to disagree up until approximately
 26 four o'clock. And then they went out to dinner, which was different from what happened the day before. The day before Your Honor excused them and let them go home. So they were confronted not only with the Allen charge but with the idea that they would be locked up for the night; and under those circumstances, in this particular case, I don't know of any stronger coercion to deprive jurors of their independent opinion than the circumstances that existed there; and if they had differed for that length of time and independent of any further instructions from the Court they had decided, through their foreman, to notify the Court that they were unable to agree, our contention is that the action that was taken after that deprived the jurors of their independent judgment; and on that basis, we should be granted a new trial.

THE COURT: Did you move me to discharge the jury?

MR. LEEMAN: Pardon me, Your Honor.

THE COURT: Did you move that I discharge the jury?

MR. LEEMAN: No, Your Honor, no, I did not. Your Honor, the motion I think I made was for Your Honor to find for the counterclaim, not to discharge the jury. I think that is a serious point in this, Your Honor, where there is so much money involved and what the evidence was with respect to this case, a jury in that predicament, transferring from officers of this Court, executors, officers appointed under this
 27 court, in the neighborhood of \$20,000 of funds under their hands on a verdict derived in that manner is, I think, very detrimental.

I think that this complaint and the counterclaim being in the nature of an equitable proceeding that it is within the power of the Court to evaluate this evidence and determine and make a decision notwithstanding the verdict of that jury, and it seems to me that what has been presented here, that protection of our system--

THE COURT: Didn't you demand a jury trial?

MR. LEEMAN: In the third party complaint, and I explained to Your Honor--

THE COURT: Didn't you demand a jury? Didn't you want it for the whole case?

MR. LEEMAN: We accepted it, yes.

THE COURT: Didn't you ask for it?

MR. LEEMAN: I don't remember what my exact language was; but notwithstanding that, Your Honor, that doesn't deprive Your Honor of doing justice after having heard the evidence, and the power that the Court has.

Now, getting down to Your Honor's action in directing a verdict for the defendant McCord on that third party complaint, you recall that we brought action against--

28 THE COURT: Counsel, how could he possibly recover if the jury found in favor of Mrs. McCord? By that I mean, how could Mr. Bird recover against Mr. McCord if the jury found in favor of Mrs. McCord?

MR. LEEMAN: Well, Your Honor, you directed a verdict--

THE COURT: How could they as a matter of logic? I just can't follow you. I leave you when you argue those points.

MR. LEEMAN: Well, here is what I am endeavoring to say: that Your Honor erred in directing a verdict for McCord and that affected the whole case. The jury, of course, knew that Your Honor had directed a verdict in favor of McCord; and I think Your Honor erred in directing a verdict for McCord for this reason. I am sure Your Honor is familiar with our Court of Appeals' decisions which all go to the effect that if there is any evidence on which a jury can arrive at the conclusion that the plaintiff is entitled to recover, the matter must be submitted to the jury. Now, at the time that Your Honor directed the verdict, we had evidence in this case that MrCord had aided Mrs. McCord in carrying this cedar chest to their home, which they owned

jointly. The evidence further was that they had a joint bank account, that they owned joint stocks, and that they even took this property and put it in a joint safe deposit box.

29 Now, I say to Your Honor that that makes out a prima facie case and that Your Honor erred in directing a verdict for McCord and that is a factor that had an effect on this jury in a decision of this case.

Now, if you take that much evidence that was offered, and uncontradicted, if Your Honor please -- if there had been any contradiction of it -- but if you take a case of two men in an automobile and one of them goes in and robs a house and brings the stuff out and the two of them take it to a room that they jointly occupy and this other fellow does the driving, do you suppose that a grand jury would refuse to indict those two as being involved in that crime? Well, we don't have to have as much in this. This is a civil action.

What I am saying is that we have produced sufficient evidence in this case to make out a prima facie case and that the Court erred in directing a verdict for McCord and that had its effect on this jury.

So summing the matter up, the plaintiff is not entitled to recover because they haven't established clearly what the gift consisted of. And we do have here factual evidence that these things they claim were given to her were at the American Security and Trust Company. It is conceded that there couldn't have been any switch in that box between 30 the time she died and the time these people were there to examine those securities. And I asked particularly of one of these witnesses if those were not listed in various places in the record, not showing that they could come from some place else. Your Honor has been to these boxes, and you know when they go there and examine them, they take the securities as they find them and they list them on that list; and that list clearly establishes, I say, that those securities were in that box and not in the cedar chest.

And so with the status of the case up to this point, what has materially affected the plaintiffs in this case is the fact that there was no

definite evidence of what securities were in the cedar chest; and further than that, Your Honor is thoroughly familiar with what the evidence was as to the time of the gift. We have the death certificate there that shows that the woman was in a coma at the time that that cedar chest was taken out of the house, and the evidence is that they understood some of these things by the blinking of her eyes.

And, another thing, they talk about gift as of mortuus. Their action would be an action of replevin, because she didn't have possession of these securities when Mrs. Jeffords died. They were not in her possession and so she couldn't claim them in this manner. If it belonged to her, she would bring an action of replevin.

31 And I say to Your Honor that the seriousness of this case and the amount that is involved, coupled with the way the jury arrived at this verdict after the Allen charge and after they had deliberated as long as they had with what has been produced here this morning, that Your Honor should either give us a judgment non obstante veredicto, grant us a new trial, and also vacate the order directing the verdict for McCord.

Thank you, Your Honor.

MR. LASKEY: If the Court please, we have submitted our position. There has been nothing new developed, and unless I can assist the Court in some fashion further, I will stand on our position as submitted.

THE COURT: The motions are denied. You will prepare an order accordingly.

MR. LASKEY: We have submitted two orders with respect to the furtherance of the verdict.

THE COURT: That is to implement the judgment.

MR. LASKEY: Yes, Your Honor, I didn't know whether you wished to take them up at this time or not.

THE COURT: I will. Everybody is ready.

MR. LEEMAN: Your Honor, that is what I was going to say, that

we note an appeal, and these securities are in the custody of the court;
 32 and I think that Your Honor should order that they remain in the custody of the court until the appeal is decided, because that would affect the amount of bond that would have to be put up; and I think that is fair.

THE COURT: Is there any objection to that?

MR. LASKEY: No, Your Honor. We have no objection to the securities remaining in the court, but I think to wrap up the case we should have the order entered so that there wouldn't be any necessity of bringing this back and bothering Your Honor with it again after the disposition of the appeal. A provision that they remain until the time for expiration of the appeal has expired or until an appeal is noted, I think, would cover the situation. I would like to see this wrapped up in so far as it can be in this Court at this time.

THE COURT: These orders that you have submitted direct the Clerk to pay Estelle McCord \$1,200 and withdraw the bond and directing that the securities be delivered to Estelle McCord. I think they are premature until this becomes a finality.

MR. LASKEY: Very well, Your Honor.

THE COURT: I will return them to you.

MR. LASKEY: Thank you, sir.

THE COURT: After the Court of Appeals has spoken, if it affirms,
 33 why, then, of course, I think it will be appropriate to submit these orders. If it reverses, then it won't be appropriate.

MR. LASKEY: That is correct.

THE COURT: That is what you wanted, Mr. Leeman?

MR. LEEMAN: As it stands now, the securities are in the custody of the court; and I don't believe anything is necessary to keep them there. Do you think so?

THE COURT: I don't know. Is the Sunburst pin in the custody of the court or was that an exhibit?

THE DEPUTY CLERK: In the custody of the court.

MR. LEE MAN: The Sunburst pin is in the custody of the court.

THE COURT: But not in the registry?

THE DEPUTY CLERK: Yes, in the registry.

THE COURT: Everything then is in the registry of the court.

MR. LASKEY: Except the stocks which are in the broker's hands.

MR. LEE MAN: No, the stocks are here.

THE COURT: They were here as exhibits.

MR. LEE MAN: And he has them.

THE DEPUTY CLERK: The stocks are with the Clerk. The Sunburst pin is in the registry.

34 THE COURT: The Clerk will not turn those stocks over to anybody except by order of the court.

THE DEPUTY CLERK: That is right.

MR. LASKEY: There is no problem.

THE COURT: I will return the proposed orders to you.

MR. LASKEY: We will hold them hopefully.

MR. LEE MAN: I wonder if we should fix a supersedeas bond here.

THE COURT: Have you filed your notice of appeal?

MR. LEE MAN: No. I haven't had time to get down there yet. I would just like to have an idea what the bond would be.

THE COURT: What do you think, Mr. Laskey? I don't see anything to execute on, except what is in the registry or the custody of the Clerk.

MR. LASKEY: No, I don't either.

THE COURT: I don't see that there is anything to supersede.

MR. LASKEY: No, there isn't.

MR. LEE MAN: Well, the defendants are bonded as executors anyway. They have that bond up. So if it becomes necessary, would a nominal bond satisfy you?

MR. LASKEY: Well, the usual cost bond.

35 MR. LEE MAN: Yes, but I mean --

MR. LASKEY: As far as superseding the judgment, we are not going to try to get anything. We couldn't. We are not being hurt.

MR. LEEMAN: We will put up the appeal bond, then.

THE COURT: All right.

MR. LEEMAN: Thank you, Your Honor.

THE COURT: You will submit this order carrying into effect my ruling, Mr. Laskey.

MR. LASKEY: Yes, Your Honor, I will.

THE COURT: All right.

(The hearing on the motions was concluded at 12:18 p.m.)

[Filed October 18, 1963]

**ORDER DENYING MOTIONS OF DEFENDANTS
AND THIRD-PARTY PLAINTIFFS FOR JUDG-
MENT NON OBSTANTE VEREDICTO, OR FOR A
NEW TRIAL, AND FOR AN ORDER VACATING
DIRECTED VERDICT AS TO THIRD-PARTY DE-
FENDANT.**

This cause coming on to be heard upon the motions of defendants and third-party plaintiffs for judgment non obstante veredicto with respect to the issues presented by the Complaint herein, or for a new trial; for a judgment non obstante veredicto upon the counterclaim of the Executors against the plaintiff, or for a new trial; and for an Order vacating and setting aside the verdict directed in favor of the third-party defendant herein; upon the points and authorities in support of said motions; upon the memorandum of points and authorities in opposition to said motions; upon supplemental points and authorities and the reply thereto; upon an Affidavit submitted in support of said motions; and the Court having taken testimony of all witnesses tendered by the defendants and third-party plaintiffs, except those witnesses as to the substance of whose testimony plaintiff's counsel stipulated, and upon

oral argument of counsel and upon consideration thereof, it is by the Court this 18 day of October, 1963

ORDERED that motion of defendants and third-party plaintiffs for a judgment non obstante veredicto, or for a new trial, with respect to the issues tendered by the Complaint be and the same hereby is denied, and it is

FURTHER ORDERED that the motion of defendants and third-party plaintiffs for judgment non obstante veredicto on the counterclaims against the plaintiff, or for a new trial, be and the same hereby is denied, and it is

FURTHER ORDERED that the motion of the defendants and third-party plaintiffs for an Order vacating and setting aside the verdict directed in favor of the third-party defendant be and the same hereby is denied.

/s/ David A. Pine
Judge

[Certificate of Service]

[Filed November 14, 1963]

NOTICE OF APPEAL

Notice is hereby given this 14th day of November, 1963, that James F. Bird, Individually, and James F. Bird and Jerome Keith, Executors of the Estate of Laura L. Jeffords, Deceased, Defendants, and Third Party Plaintiffs, hereby appeal to the United States Court of Appeals for the District of Columbia from the judgments of this Court entered on the 18th day of October, 1963 in favor of Estelle S. McCord, Plaintiff, and Harlow C. McCord, Third Party Defendant, against said Defendants and Third Party Plaintiffs.

/s/ Herbert P. Leeman
Attorney for Defendants and Third
Party Plaintiffs.

* * *

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D2B-SW-MC6
10-26-64
①

BRIEF FOR APPELLANTS

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,419

958

JAMES F. BIRD, Individually,
and
JAMES F. BIRD and JEROME KEITH,
Executors of the Estate of
Laura L. Jeffords, Deceased,

Appellants,

v.

ESTELLE S. McCORD
and
HARLOW C. McCORD,

Appellees.

Appeal From The United States District Court
For the District of Columbia

United States Court of Appeals
For the District of Columbia

FILED MAR 18 1961

Nathan J. P. [Signature]
CLERK

HERBERT P. LEEMAN

Western Union Building
1405 G Street, N.W.
Washington, D. C. 20005

Attorney for Appellants

STATEMENT OF QUESTIONS PRESENTED

1. The question is whether plaintiff, Estelle S. McCord, established by clear and convincing evidence as required by law the alleged gift by testatrix to her of a certain cedar chest and its contents at a time six days before the death of the testatrix when testatrix was being administered demerol, was unable to speak, and her only reaction was the blinking of her eyes?

2. The question presented is whether the claimed gift of two (2) five thousand dollar U. S. Government bonds, payable to bearer, to plaintiff, Estelle S. McCord, by the testatrix at a time when she was seriously ill and 89 years of age, was established by clear and convincing evidence as required by law, when said plaintiff pleaded that she had acquired said bonds for valuable consideration under agreement with testatrix and testified that she had purchased said bonds from testatrix for \$25.00?

3. The question presented is whether a claimed gift of certain stocks and securities to the plaintiff, Estelle S. McCord, by the testatrix, is established by clear and convincing evidence as required by law, when said plaintiff could not identify such said stocks or securities and the same had not been transferred to her by endorsement on said securities?

4. The question presented is whether the Trial Judge erred in giving the Allen Charge to the Jury after the Jury had deliberated several hours and its Foreman had reported in writing that they were unable to agree and the Trial Judge, with the knowledge of the Jury, arranged to have them confined for the night?

(iii)

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,419

JAMES F. BIRD, Individually,
and
JAMES F. BIRD and JEROME KEITH,
Executors of the Estate of
Laura L. Jeffords, Deceased,

Appellants,

v.

ESTELLE S. McCORD
and
HARLOW C. McCORD,

Appellees.

Appeal From The United States District Court
For the District of Columbia

BRIEF FOR APPELLANTS

JURISDICTIONAL STATEMENT

This Court has jurisdiction under Title 28, §1291, U. S. Code.

The appellee, Estelle S. McCord, as plaintiff below, filed a complaint in the United States District Court for the District of Columbia, in Civil Action No. 1746 - '60, for recovery of securities or their value, for accounting, injunction, etc., naming James F. Bird, Individually, and

James F. Bird and Jerome Keith, Executors of the Estate of Laura L. Jeffords, Deceased, as defendants. (J.A. 1)

Said complaint was answered separately by (1) defendant James F. Bird, Individually (J.A. 7), and by (2) defendants James F. Bird and Jerome Keith, Executors (J.A. 4).

Said Executor-Defendants made counterclaim in the action against plaintiff, Estelle S. McCord, for unlawful conversion of assets from the Estate of Laura L. Jeffords, Deceased. (J.A. 4)

Reply to Counterclaim was filed by Plaintiff Estelle S. McCord (J.A. 6-7).

Said Executor-Defendants made Third-Party-Complaint and, as Third-Party-Plaintiffs, made Harlow C. McCord Third-Party-Defendant in claim for recovery of or upon assets of the Estate of Laura L. Jeffords, Deceased, wrongfully obtained, removed and retained by and between said Third-Party-Defendant, Harlow C. McCord, and plaintiff, Estelle S. McCord, from said Laura L. Jeffords and her said Estate. (J.A. 9-10)

Said Harlow C. McCord, as Third-Party-Defendant, answered the said Third-Party-Complaint. (J.A. 12)

This Appeal (J.A. 431) is taken from judgments of the court below (1) by direction of the Trial Judge in favor of the Third-Party-Defendant (J.A. 396) and (2) in favor of Plaintiff following Jury Verdicts for Plaintiff on her Complaint (J.A. 397) and upon four (4) of the Counterclaims of Defendants (J.A. 398), made final after the Trial Judge denied motions of the Third-Party-Plaintiffs and Defendants to have said judgments set aside and entered in their favor non obstante veredicto, or a new trial granted (J.A. 399-431), entered Oct. 18, 1963. (J.A. 430)

STATEMENT OF CASE

This case was begun by the filing of a Complaint by one Estelle S. McCord against James F. Bird and Jerome Keith, Executors of the Estate of Laura L. Jeffords, Deceased, and James F. Bird, individually, claiming

as a gift to her from the testatrix of a cedar chest and its contents. In the Complaint she was unable to identify the property. (J.A. 1)

The Executors filed an Answer denying the alleged gift, together with a Counterclaim demanding recovery of property of the testatrix wrongfully had and possessed by said Estelle S. McCord. (J.A. 4, 5, 6)

Reply to said Counterclaim of the Executors was filed by said Estelle S. McCord. (J.A. 6)

Answer of James F. Bird, individually, denying the alleged gift, was filed. (J.A. 7)

Order authorizing Executors to bring in Harlow C. McCord as Third-party-Defendant was filed. (J.A. 9)

Third-Party-Complaint against Harlow C. McCord was filed, claiming that said Third-Party-Defendant did individually or jointly with Estelle S. McCord actively wrongfully remove and convert assets of the testatrix. (J.A. 10)

Answer to Third-Party-Complaint was filed. (J.A. 12)

The Appellant Executors claim that Appellee Estelle S. McCord failed to establish gifts by clear and convincing evidence as required by law.

The Appellant Executors claim that it was shown by clear and uncontradicted evidence that Appellee Harlow C. McCord was in active aid and abetment of Appellee Estelle S. McCord in removal, concealment and retention of the property of the testatrix.

The Appellants claim that the Trial Judge erred in directing a verdict and judgment in favor of the Appellee Harlow C. McCord on the issues of the Third-Party-Complaint (J.A. 396).

The Appellant Executors claim that the Trial Judge erred in denying Appellants' motion for judgment in their favor on the issues of the Complaint of Appellee Estelle S. McCord and on the issues of Appellants' Counterclaim against Appellee Estelle S. McCord.

The Appellants claim that the Trial Judge erred in denying their Motions (J.A. 399) for judgment non obstante veredicto as to the Complaint of Estelle S. McCord v. James F. Bird, individually, and James F. Bird and Jerome Keith, Executors of the Estate of Laura L. Jeffords, Deceased, or in the alternative for a New Trial; for judgment non obstante veredicto upon the total of items of counterclaims of the Executors in claim by them against Estelle S. McCord, or in the alternative for a New Trial; for an Order vacating and setting aside the verdict and judgment directed in favor of Appellee Harlow C. McCord on the issues in the matter of the Third-Party-Complaint.

The Appellants claim that the Trial Judge erred in giving the Jury the Allen Charge (J.A. 361) under the circumstances presented to them in their then situation.

This appeal is taken from judgments entered against the Appellants, made final October 18, 1963 (J.A. 431), dated November 14, 1963.

STATUTES, TREATIES, REGULATIONS INVOLVED

D.C. Code, Title 12-302 - Actions to charge executors or others to answer for debt or default of another.

No action shall be brought whereby to charge any executor or administrator upon any special promise to answer damages out of his own estate, or whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person, or to charge any person upon any agreement made upon consideration of marriage, or upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them, or upon any agreement that is not to be performed within the space of one year from the making thereof, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, which need not state the consideration, and signed by the party to be charged therewith or some other person thereunto by him lawfully authorized. (Mar. 3, 1901, 31 Stat. 1367, ch. 854, § 1117.)

D.C. Code, Title 12-303 - Declarations, grants, and assignments of trust — Implied trusts.

All declarations or creations of trust or confidence of any lands, tenements, or hereditaments shall be manifested

and proved by some writing signed by the party who is by law enabled to declare such trust or by his last will in writing, or else they shall be utterly void and of none effect.

All grants and assignments of any trust or confidence shall likewise be in writing, signed by the party granting or assigning the same or by such last will or devise, or else shall likewise be utterly void and of none effect.

Where any conveyance shall be made of any lands or tenements by which a trust or confidence shall or may arise or result by the implication or construction of law, or be transferred or extinguished by an act or operation of law, then and in every such case such trust or confidence shall be of the like force and effect as the same would have been if this statute had not been made. (Mar. 3, 1901, 31 Stat. 1367, ch. 854, § 1118).

D. C. Code, Title 12-403 - Executors may sue to vacate fraudulent transaction.

Any executor, administrator, receiver, assignee, or other trustee of an estate, or of the property and effects of an insolvent estate, corporation, association, partnership, or individual, may, for the benefit of creditors and others interested in the estate or property so held in trust, disaffirm, treat as void, and resist all acts done, transfers, and agreements made in fraud of the rights of any creditor, including themselves and others interested in any estate or property held by or of right belonging to any such trustee or estate; and every person who in fraud of the rights of creditors and others shall have received, taken, or in any manner interfered with the estate, property, or effects of any deceased person or insolvent corporation, association, partnership, or individual shall be liable, in the proper action, to the executors, administrators, receivers, or other trustees of such estate or property for the same, or the value of any property or effects so received or taken, and for all damages caused by such acts to any such trust estate. (Mar. 3, 1901, 31 Stat. 1368, ch. 854, § 1122).

STATEMENT OF POINTS

1. The Trial Judge erred in failing to direct a verdict for the defendants on the Complaint of the Plaintiff, Estelle S. McCord.
2. The Trial Judge erred in failing to direct a verdict in favor of the Defendants on their Counterclaim against the Plaintiff, Estelle S. McCord.

3. The evidence offered in support of the Complaint of Estelle S. McCord failed to establish a conversion of the property or properties as required by law.

4. The evidence offered in support of the Complaint of Estelle S. McCord failed to establish a gift of the property or properties as provided by law.

5. The evidence offered by Estelle S. McCord as defense to the Counterclaim of the Defendants failed to establish a gift of the property or properties as provided by law.

6. The Trial Judge erred in failing to direct a verdict in favor of the Third-Party-Plaintiffs on their Third-Party-Complaint against the Third-Party-Defendant, Harlow C. McCord, and in directing a verdict in favor of the Third-Party-Defendant, Harlow C. McCord.

7. The uncontradicted evidence offered in support of the Complaint of the Plaintiff, Estelle S. McCord, shows clearly that the said Plaintiff was not able to identify the property which she, by her Complaint, alleged had been given as gifts to her and, also, had been items converted from her ownership.

8. The Trial Judge erred in giving the Jury the Allen Charge.

SUMMARY OF ARGUMENT

As to Complaint of Appellee, Estelle S. McCord

The transcript of testimony clearly shows that the Appellee, Estelle S. McCord, has failed to establish that there was a valid gift by the deceased, Laura L. Jeffords, of a certain cedar chest and its contents, by clear and convincing evidence as required by law. The testimony failed to establish that certain stocks, bonds and securities owned by Laura L. Jeffords, deceased, were in said cedar chest and a part of the alleged gift. Judgment non obstante veredicto or in the alternative a new trial should be granted the Appellants.

As to Counterclaim of Appellants, Executors

The appellants, as Executors, filed a counterclaim against Appellee, Estelle S. McCord, the plaintiff below, and established that the property

claimed by them as Executors, including two Five Thousand Dollar U.S. Government Bonds, Payable to Bearer, was property of the testatrix, Laura L. Jeffords, deceased, and that said Appellee, Estelle S. McCord, concealed the same and failed to establish a valid gift of all said property to her by clear and convincing evidence as required by law. With respect to the said two Five Thousand Dollar Bonds, the said Appellee, Estelle S. McCord, abandoned her claim and testimony that they were sold to her by agreement with the testatrix, Laura L. Jeffords, deceased, for \$25.00 and claimed them as a gift without clear and convincing evidence as required by law. A judgment non obstante veredicto or a new trial should be granted the Appellants.

As to Appellant-Executors' Third-Party-Complaint Against Appellee,
Harlow C. McCord, Third-Party-Defendant

The Appellant-Executors filed a Third-Party-Complaint against Appellee Harlow C. McCord, Third-Party-Defendant, and established by uncontradicted evidence that said Appellee, Harlow C. McCord, in joint and concerted participation with Appellee, Estelle S. McCord, removed, possessed and concealed the property of the testatrix, Laura L. Jeffords, deceased. The Trial Judge directed a verdict in favor of the said Appellee, Harlow C. McCord, and thereafter submitted the remaining cases, necessarily including the aforesaid uncontradicted evidence of the participation of said Harlow C. McCord, to the determination of the Jury on the issues between the Appellants and the Appellee, Estelle S. McCord. A judgment non obstante veredicto or a new trial should be granted the Appellants against the said Harlow C. McCord on the Third-Party-Complaint.

As to the Allen Charge to the Jury

The Jury sat in hearing of the evidence, commencing September 16, 1963, and, excluding Wednesdays, Saturdays and Sundays, until and including September 30, 1963. And, following summations by counsel and instructions of the Court, the Jury began deliberations about 3 p.m.

o'clock, October 1, 1963. They deliberated until approximately 6 p.m. o'clock, on October 1, 1963, and reassembled at 10 a.m. o'clock, October 2, 1963, and deliberated until 12:30 p.m. o'clock, at which time they were taken to lunch and returned to their deliberations about 1:30 p.m. o'clock, and deliberated until 3:17 p.m. o'clock. At that time they entered the court room and the Judge noted and read the following note:

"Judge, your Honor, we cannot come to a decision.
"Foreman, Francis Sembly."

The Court thereupon gave the Allen Charge to the Jury and they returned at 3:30 p.m. o'clock to the jury room for further deliberations. The Court prepared to keep them together until they reached a verdict and arranged to keep them confined overnight. The Jury, in the custody of U. S. Marshals, was taken to dinner from 6:30 to 8:00 p.m. o'clock. The Jury returned at 9:20 p.m. o'clock with verdict.

Plainly the Jury, having been unable to agree after such lengthy deliberation, having been permitted to separate and go home on the previous day, having been given the Allen Charge, and being aware that they were to be confined, felt coerced into rendering a verdict notwithstanding that they had reported through their foreman after lengthy deliberations that they were unable to reach a verdict. Justice demands that the verdict be set aside.

ARGUMENT

I

The Trial Judge Erred in Failing To Direct a Verdict for the Defendants on the Complaint of the Plaintiff, Estelle S. McCord

Laura L. Jeffords, the testatrix in Administration Case No. 99749, in the Probate Court of the District of Columbia, died on December 25, 1959, at the age of 89 years, fifteen days before her 90th birthday.

She left a last will and testament, part of which was printed form and the remaining part in her own handwriting. This will was dated July 2, 1951, and it has been admitted to probate and record. (TR. 772-777) The Appellants, James F. Bird and Jerome Keith are named as Executors and have qualified as such.

On October 11, 1959, she suffered a paralytic stroke of the right side of her body and face. The Appellee, Estelle S. McCord, undertook out of her so-called friendship from the time of the aforesaid paralytic stroke to look after the testatrix until her death December 25, 1959, except for a period of several days when she was out of town.

On the 14th day of October, 1959, Wray Rochambeau, a trained nurse, was employed for the said testatrix and suggested that arrangements be made to take care of the necessary expenses of the testatrix.

Estelle S. McCord, the Appellee, endeavored to get the testatrix to give her a power of attorney to handle her financial affairs, but the testatrix refused to do so. (J.A. 310)

On October 16, 1959, the testatrix executed a power of attorney giving James F. Bird, one of the Appellants, the authority to handle her financial affairs. (TR 368) The American Security and Trust Company insisted upon having its own form of power of attorney and on October 19, 1959, Mrs. Emma Sobel, a representative and employee of said bank, and a Notary Public, came to testatrix's house and bedside and had power of attorney executed by the testatrix, by "Her X Mark," on the bank's form to James F. Bird (TR. 370), and, also, at request of testatrix, assisted her in making funds available to James F. Bird for her burial in Ohio. (J.A. 249-250)

Thereafter the condition of the testatrix rapidly deteriorated (J.A. 37, Supp. 23) and it could not be determined what the extent of her mental capacity was. (J.A. 37, Supp. 13) She was definitely senile (J.A. 242) and seven days before her death she was totally incapacitated mentally and physically. (Death Certificate, J.A. 367.)

On December 19, 1959, while she was totally incapacitated, Estelle S. McCord, one of the Appellees, suggested to James F. Bird that a certain cedar chest should be removed for safe keeping, because there were a number of persons, including roomers, in and about the premises, and suggested that it be taken to her, the said Mrs. McCord's, residence.

Mr. Bird consented and Mrs. McCord immediately got in communication by telephone with her husband, Harlow C. McCord, the other Appellee, who promptly, with the assistance of his son-in-law, removed the cedar chest with its contents to the residence of the said Appellees.

Thereafter on October 21, 1959, at the suggestion of Mrs. McCord, Mr. Bird went with her in her automobile to her residence and obtained from the cedar chest two or three bundles of papers and with Mrs. McCord returned them to the home of the testatrix. At the time no examination of the papers was made and they were not listed or identified. (J.A. 37, Supp. 17)

After the death of the testatrix, Mr. Bird and the then attorney for the Executors, Mr. Charles B. Sullivan, Jr., questioned Mrs. McCord about a three stone diamond ring which was not among certain jewelry of the testatrix in the possession of Mrs. McCord.

Mrs. McCord became upset and left the conference and on the advice of her husband, Harlow C. McCord, employed an attorney. (J.A. 37, Supp. 33-55-56-57-58)

On the advice of her attorney (J.A. 263), Mrs. McCord filed the Complaint (Civil Action No. 1746-'60)(J.A. 1) against Mr. Bird, individually, and Mr. Bird and Jerome Keith, as Executors of the Estate of said deceased testatrix.

The Appellants, the Executors, answered denying gift of the cedar chest or its contents; denied that the property referred to in the Complaint, but not enumerated or identified, were gifts to the Appellee Estelle S. McCord, by the testatrix, and the Executors denied conversion of anything.

Appellant James F. Bird, individually, answered, denying said alleged gifts; denied having received any of such unlisted or unenumerated property either individually or as a Co-Executor; denied conversion of anything at any time in any capacity from Appellee Estelle S. McCord.

The Appellant Executors filed a Counterclaim against the Appellee Estelle S. McCord claiming bonds, money, jewelry, and other property from Appellee Estelle S. McCord, which other property was discovered upon the taking of the deposition of said Appellee Estelle S. McCord after her suit had been filed.

After Appellee Harlow C. McCord upon attempted taking of his deposition refused to testify as to relevant and material matters, claiming privilege as the husband of Appellee Estelle S. McCord, the Appellant Executors with permission of the Court (J.A. 9), filed a Third-Party-Complaint against the said Harlow C. McCord based upon information obtained that he had joined with Appellee Estelle S. McCord in secreting certain property and assisting her in endeavoring to retain the property (J.A. 10-11).

The case went to trial upon the Complaint, Counterclaim and Third-Party-Complaint.

The said Estelle S. McCord, Appellee, in her testimony, was unable to identify the stocks, bonds and securities which her counsel at the pre-trial had claimed were in the said cedar chest and her counsel, Robert M. Gray, in fact testified that the filing of the Complaint was his idea and he had the said Estelle S. McCord swear to the same and authorize him to file it for her Complaint, which he did without note of such claim or demand to either of the Executors before he filed such said Complaint (J.A. 1) on June 9, 1960.

Mrs. Jeffords, the testatrix, at the time Mrs. McCord had the cedar chest and its contents removed to her home, on December 19, 1959, was in a coma and unable to make a gift of anything (J.A. 367).

Notwithstanding she claimed the contents of the cedar chest, she testified that the next day she took from the cedar chest certain nightgowns, sheets, etc., and returned them to the home of Mrs. Jeffords (J.A. 37, Supp. 42).

Among other things in the cedar chest was \$1,100.00 in one-dollar bills according to her testimony at first, but when she was recalled to the witness stand she changed her testimony as to the denominations of the bills. (J.A. 37, Supp. 53)

Mr. Harlow C. McCord, Mrs. McCord's husband, and Third-Party-Defendant, was with Mrs. McCord at the time and thereafter when the cedar chest was in their home (J.A. 57, 58, 59, 60), and he was the one who secured the services of Robert M. Gray as her attorney in this matter. The testimony was that they owned their home as tenants by the entirety, had a joint bank account and a joint safe deposit box into which was placed cash claimed by the executors and, also, the U. S. Government Bonds payable to bearer. He testified that they have filed joint Federal Income Tax returns but have not included therein any income from any of the claimed property. (J.A. 60)

The only corroboration for the testimony of Estelle S. McCord that Mrs. Jeffords made a gift to her of the cedar chest and its contents is the testimony of Neane Michalka, an elderly nurse engaged on the 17th day of December, 1959, and who testified that on that day Mrs. Jeffords, who was physically and mentally unable to comprehend her affairs, stated to her that she was giving her cedar chest and its contents to Mrs. McCord.

The Appellee Estelle S. McCord failed to establish a gift, or any of the allegations of her Complaint, by clear and convincing evidence as required by law. The law is clear that a gift or gifts such as are attempted to be proven here, whether they be considered inter vivos or causa mortis, must be established by clear and convincing evidence, and this is supported by the following citations:

Evidence of invalid husband's declarations to his wife, to whom he had given power of attorney relative to his securities, that his securities were hers, held insufficient to establish a gift of them in proceedings to require the widow, who was husband's executrix, to include the

securities in husband's estate. *Casey v. Topliffe, 65 App. D. C. 100, 80 F. 2d 543.

Where a gift is first asserted after the donor's death, rule requires clear and convincing evidence, especially where confidential relationship existed between the parties. *Myers v. Tschiffeley, 64 App. D. C. 17, 73 F. 2d 657.

Other cases in point are:

*In re: Stahl's Estate, 305 Ill App. 517, 27 N. E. 2d 662; In re: Reardon's Estate, 26 NYS 2d 203 (Required no submission to jury); *Johnson v. Goodballet (U.S.C.C.A. Mo.), 46 F.2d934; *Garner v. Garner, 171 Md. 603, 190 A. 243 (citations).

The Motion of the Appellants for judgment non obstante verdicto or in the alternative for a new trial should be granted.

II

The Trial Judge Erred in Failing To Direct a Verdict in Favor of the Defendants on Their Counterclaim Against the Plaintiff, Estelle S. McCord

The Appellant Executors filed a Counterclaim against the Plaintiff, Estelle S. McCord, Appellee, for the cedar chest and its contents, certain jewelry, cash and two Five Thousand Dollar U. S. Government Bonds payable to bearer.

With respect to the two U. S. Government bonds the Appellee, Estelle S. McCord, concealed the fact that she and her husband, Harlow C. McCord, had and held the same until they were discovered by the Executors when her deposition was taken on July 7, 1960, over six months after the death of Mrs. Jeffords.

Mrs. McCord set forth in her reply to plaintiffs' counterclaim that she had, by agreement with Mrs. Jeffords, purchased said bonds from her for valuable consideration and first testified that she had by agreement with Mrs. Jeffords paid her \$25.00 for these two Five Thousand

Dollar bonds and exhibited and offered in evidence a check payable to Mrs. Jeffords signed by Estelle S. McCord for \$25.00, which check was admitted in evidence. The check (J.A. 375) had no writing upon it to indicate for what purpose it was given. *(Alvin Epstein Advertising Corp. v. Helfer & Spector, 138 A 2d 925) (Mun. Ct. of App., D. C.) (D. C. Code, Title 12, Secs. 302-303)

When recalled to the witness stand Mrs. McCord changed her testimony and claimed the bonds as a gift.

With respect to these bonds, the jewelry, cash, including \$1,100.00 in one-dollar bills, and other property, there was no adequate corroboration and no clear and convincing evidence as required by law that such gifts were made. [Cases cited, supra.]

The Motion of the Appellant Executors for judgment non obstante veredicto or in the alternative for a new trial should be granted. D. C. Code, Title 12, §403. *Hurwitz v. Hurwitz, 78 U.S. App. D. C. 66, 136 F. 2d 796.

III

The Evidence Offered in Support of the Complaint of Estelle S. McCord Failed To Establish a Conversion of the Property or Properties as Required by Law

The Complaint of the Plaintiff, Estelle S. McCord, alleges conversion to the estate of property by the Executors, and James F. Bird, individually, claimed by her as a gift from the deceased testatrix.

The evidence offered to support this claim was far from being clear and convincing in that the property claimed by her as being in the cedar chest was never identified by her as such, and her attempt through copies of writings (J.A. 376, 377) by attorney Charles B. Sullivan, Jr., a former attorney for the appellants, admitted in evidence, and his testimony (J.A. 63-65), very materially refuting the same, leaves the state of the evidence in this regard a nullity.

IV.

**The Evidence Offered in Support of the Complaint
of Estelle S. McCord Failed To Establish a Gift
of the Property or Properties as Provided by Law**

The evidence offered by said Estelle S. McCord in an effort to support the Complaint in a large measure was obtained from the records filed by the Executors in the probate case and did not even by inference establish that the said Estelle McCord ever saw or was able to identify the securities and other property as being in the cedar chest or the subject matter of a gift from the testatrix.

The cedar chest and its contents were never delivered to the said Estelle S. McCord by the executrix on December 19, 1959, as alleged. Said testatrix, besides being senile for more than one year and suffering arteriosclerosis for more than one year and suffering a series of paralytic strokes, commencing October 11, 1959, next before her death on December 25, 1959, was stricken with fatal cerebral thrombosis seven days before her death on December 25, 1959, as is attested by the doctor's official death certificate signed by him:

"Immediate cause of death: Cerebral Thrombosis.
Interval between onset and death: 7 days.
Due to: Cerebral Arteriosclerosis - One + Yr." (J.A. 367)

V.

**The Evidence Offered by Estelle S. McCord as
Defense to the Counterclaim of the Defendants
Failed To Establish a Gift of the Property or
Properties as Provided by Law**

The Counterclaim filed by the Executors was established by the clear and exact testimony of the Executor, James F. Bird, as to the identity of the property as belonging to the estate and his clear-cut denial that the testatrix at any time during her lifetime told him or in any way indicated to him that she had made or intended to make a gift of the property involved to Estelle McCord.

The evidence clearly established that the testatrix had complete confidence in Mr. Bird and left in his hands the management of her af-

fairs and provided for him to take care of her funeral and burial in Ohio.

This is supported by the testimony of the witnesses, Emma Sobel, notary public, and chief clerk of the Woodley Park Branch of the American Security & Trust Company (J.A. 247-251), and Wray Rochambeau, a nurse in attendance upon the testatrix. (J.A. 308-333)

Based upon this testimony and the failure of the necessary clear and convincing testimony by law required to support a gift, a verdict non obstante veredicto or in the alternative the motion for a new trial should be granted.

VI.

The Trial Judge Erred in Failing To Direct a Verdict in Favor of the Third-Party-Plaintiffs on Their Third-Party-Complaint Against the Third-Party-Defendant, Harlow C. McCord, and in Directing a Verdict in Favor of the Third-Party-Defendant, Harlow C. McCord.

The evidence was clear and uncontradicted that the third-party defendant, Harlow C. McCord, was called by his wife, Estelle McCord, and in participation with her and his son-in-law took the cedar chest and its contents in arrangement with his wife to their home. That they removed from the cedar chest, according to their testimony, certain cash and possibly other things and along with two Five Thousand U.S. Government Bonds payable to bearer, admittedly the property of the testatrix, deposited them in their joint safe deposit box of the said McCord and his wife. The evidence, uncontradicted, was that these parties handled their affairs jointly, they owned their real estate as tenants by the entirety, they had a joint bank account and joint stock ownership, and they filed joint income tax returns. The said Harlow C. McCord arranged for employment of the attorney, Robert M. Gray, to represent both him and his wife in this case. It was established beyond all doubt that he was a party to the concealment of the two Five Thousand Dollar U.S. Bonds for a period of over six months. * Hurwitz v. Hurwitz, 78 U.S. App. D.C. 66, 136 F.2d 796, supra.

VII.

The Uncontradicted Evidence Offered in Support of the Complaint of the Plaintiff, Estelle S. McCord, Shows Clearly That the Said Plaintiff Was Not Able To Identify the Property Which She, by Her Complaint, Alleged Had Been Given as Gifts to Her, and Which Thereafter Allegedly Had Been Converted From Her Ownership.

A consideration of the evidence of the plaintiff, Estelle S. McCord, shows clearly that the stocks, bonds and securities claimed to have been in the cedar chest could not have been in the cedar chest, as both Estelle McCord and Harlow McCord owned and understood the value of securities and would normally have remembered the names and values of at least one of the securities. This must be taken together with the fact that both Estelle McCord and the deceased testatrix from long experience knew that if ownership of stocks were to be transferred, the assignment on the certificates should be executed.

The testatrix was aware that age could impair her power to control her property and in her own handwriting in the will provided that there must be a bill of sale for any future property disposed of. (Tr. 772-777) This procedure was followed in one case by the testatrix and Mrs. McCord. (J.A. 365)

The final testimony destroying any chance of there being clear and convincing testimony of a gift was the attempt to use testimony of Charles B. Sullivan, Jr., the former attorney of the Executors, in contradiction (J.A. 63-65) of his written statements of record (J.A. 376-377) whose testimony with reference to the Executor, James F. Bird, clearly shows his antagonism and effort to influence the jury against the ~~appellees~~. *appellants*

VIII.

The Trial Judge Erred in Giving the Jury the Allen Charge

This trial consumed nearly three weeks of time. After the charge by the Judge, the jury began its deliberation, and deliberated from 2:50 p.m. to 5:50 p.m. when it was excused until 10:00 a.m. the next day. They

deliberated the next day from 10:00 a.m. until 12:30 p.m. when they were taken to lunch. They convened for further deliberations at 1:30 p.m. and deliberated until 3:17 p.m. when the judge received a note from the foreman advising that the jury could not come to a decision.

Thereupon the Court brought the jury into the court room and gave them the "Allen Charge." The jury returned to deliberate further.

At 5:50 p.m. the jury was still deliberating and counsel for the Appellants offered to renew his motions for directed verdicts if the Judge contemplated discharging the jury.

The jury was taken to dinner at 6:00 p.m. and returned to their deliberations at 8:00 p.m.

Arrangement had been made for their confinement for the night in case they did not reach a verdict.

The giving of the Allen Charge in itself is not improper, but after having advised the court through their foreman that they were unable to reach a verdict, having been permitted to go home on the previous evening, and now knowing that arrangements were made to keep them confined for the night, the Allen Charge and the knowledge that they were to be confined clearly amounted to a coercion of the jury and prevented fair and proper consideration of the case. The finding for the Executors for the sunburst diamond (pin) shows clearly that the verdict was the result of coercion, since the result is incomprehensible when taken with the other findings.

This is clearly the case as members of the jury during the course of the two evenings of their deliberations had sent messages through the marshals and the clerk of the court by telephone advising of their situation or giving instructions with respect to members of their families.

People v. Sheldon, 156 N.Y. 268, 50 N.E. 840.

Henderson v. Reynolds, 85 Ga. 159, 10 S.E. 734.

Mead v. Richland Center (1941), 273 Wis. 537, 297 N.W. 419.

CONCLUSION

This case involves the assets of a testatrix, who at the time of her death was within 15 days of being 90 years of age, and these verdicts have the effect of depleting the assets of the estate and causing incurrence of expenses to the extent of approximately \$30,000.00. The alleged gifts are alleged to have been made after the testatrix had suffered a series of paralytic strokes and a cerebral thrombosis, and was within a short period of the date of her death. The law is clear, particularly in these conditions, that any gifts must be established by clear and convincing evidence, especially since the deliveries were not made by the alleged donor, the assignments of the stocks executed by the alleged donor, and such alleged gifts, were surrounded by secrecy and concealment coupled with lack of identification of the stocks and securities.

It is respectfully submitted that the Appellants should be granted verdicts non obstante veredicto or in the alternative granted a new trial of all issues.

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Attorney for Appellants

APPELLANTS' REPLY BRIEF

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,419

JAMES F. BIRD, Individually,
and
JAMES F. BIRD and JEROME KEITH,
Executors of the Estate of
Laura L. Jeffords, Deceased,

Appellants,

v.

ESTELLE S. McCORD
and
HARLOW C. McCORD,

Appellees.

Appeal From the United States District Court
for the District of Columbia

United States Court of Appeals
for the District of Columbia Circuit

FILED MAY 19 1964

Nathan J. Paulson
CLERK

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Attorney for Appellants

1960-1961

1962-1963

1964-1965

1966-1967

1968-1969

1970-1971

1972-1973

1974-1975

1976-1977

1978-1979

1980-1981

1982-1983

United States Court of Appeals

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JAMES F. BIRD, Individually,
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v.

ESTELLE S. McCORD
and
HARLOW C. McCORD,

Appellees.

Appeal From the United States District Court
for the District of Columbia

APPELLANTS' REPLY BRIEF

I.

Replying to the Brief of the Appellees, Appellants respectfully direct the Court's attention to the fact that Appellees in their brief make no reply to the merits of the contention of Appellants that the lower Court erred in directing a verdict for the appellee, Harlow C. McCord. They contend that because the jury decided in favor of the appellee, Estelle S. McCord, on all but one claim (the sunburst diamond pin) that it is immaterial. It must be obvious that the directing of a verdict for the appellee, Harlow C. McCord, in the midst of the taking of the testimony had a very damaging effect upon Appellants' case.

Appellees are unable to point to any clear and convincing evidence to offset the facts stated in the death certificate, prepared by the doctor obtained by the appellee, Estelle McCord, who was a friend of both appellees.

"DEATH CERTIFICATE: (Excerpts)

CAUSE OF DEATH

PART I. DEATH WAS CAUSED BY:

**IMMEDIATE CAUSE (a) Cerebral thrombosis
7 days**

Conditions, if any, which gave rise to above cause (a),
stating the underlying cause last.

**DUE TO (b) Cerebral and Arteriosclerosis
1 + yr."**

Appellees complain that Appellants did not call the doctor to testify. Appellants had the said doctor's statement of the condition of the deceased and burden was upon the appellees to endeavor to have him testify if they thought he would modify his findings. It is significant that no effort was made to call him as a witness.

Appellees in their brief have cited and rely upon many self-serving statements by the appellee, Estelle S. McCord, but are unable to cite any statements of witness or other evidence to corroborate or establish clearly and convincingly a gift or gifts as required by law.

The witness Neane Michalka started to work as a practical nurse, and first saw the deceased on December 17, 1959. The deceased died on December 25, 1959.

This nurse remembered no conversation with the deceased, except a statement she says the deceased made to her within a few minutes after she arrived on December 17, 1959. Quote: "We are going to get along fine because you have a dimple and I always get along fine with people with dimples."

Q. Now, during that day did Mrs. Jeffords say anything to you with respect to a certain cedar chest?

A. Indeed she did.

Q. Will you tell us what that was?

A. Yes, I hadn't been there but a very short time and I was by her bed and she said 'There is something I want you to do for me,' and I said, 'I will do anything I can, what is it, Mrs. Jeffords?' She said, 'Do you see that cedar chest over there? I want Mrs. McCord to have that cedar chest and everything in it. Everything in it belongs to Mrs. McCord.' " (J.A. 39-40)

The evidence is that at that time Mrs. Jeffords was within a few days of being 90 years of age, was so blind she could not see to read or write, had suffered a stroke, had a heart condition, and was being given "demerol."

Further at that time there were other nurses attending Mrs. Jeffords. Mr. Bird was at the house daily and there were other persons in the house.

The evidence is that there were two chests in the room and as Mrs. Jeffords could not see, it cannot be clearly determined which chest was intended if the alleged statement was made.

All of the evidence with regard to the cedar chest is conflicting and Mrs. McCord herself testified at one point that she and Mrs. Jeffords were to sort out the contents of the cedar chest.

There is no testimony of an "act of gift" which it would seem necessary to have in order to satisfy the requirement of the law that the evidence of a gift must be clear and convincing.

This seems to be a stronger case of failure of the evidence than

the case of Klein, etc. v. Price, U.S. App. D.C. No. 18,152 decided by this Court on March 26, 1964 in which the Court in its opinion stated, quote:

"Appellee thus having failed to meet his burden of proof there was no issue for submission to the jury but, having submitted it to the jury, probably out of an abundance of caution, the trial judge should have granted judgment non obstante veredicto thereafter."

Appellants' contentions are further supported by the case of Thomas T. Keane, Sr., appellant, v. Charles A. Gartrell, t/a Charles A. Gartrell Company, appellee, U.S. App. D.C. No. 18,066 decided by this Court on April 30, 1964 in which the Court in its opinion stated, quote:

"A contract to answer for the debt or default of another is within the Statute of Frauds. It cannot rest on dubious implications but must be clearly expressed."

In this case the law requires that a gift must be established by clear and convincing evidence and that is lacking in appellees' case, as there is a complete lack of evidence of "an act of gift." The best that can be said of appellees' case is that their case rests upon the self-serving declarations of the appellee, Estelle S. McCord, and the dubious implications of the witness, Michalka, clear and convincing corroboration is lacking in appellees' case.

With respect to the two Five Thousand Dollar U.S. Bonds which were in the possession of the appellee, Estelle S. McCord, and were concealed by her until her deposition was taken, it is impossible to determine if there was a gift, when her testimony was that she purchased them with a check for \$25.00, with no designation of the purpose of the payment on the check, and her later determination to claim the bonds as a gift. There is no corroboration of this alleged transaction.

The evidence establishes that this action was instituted by the ap-

pellee, Estelle S. McCord, after she became upset, when questioned about some jewelry claimed to belong to the estate, and consulted attorney, Robert M. Gray, and that several months later, without instructions from the appellee, Estelle S. McCord, but on his advice, she signed and swore to the complaint herein (J.A. 263).

With respect to the stock certificates involved, there is no clear and convincing evidence that they were in the cedar chest and no assignment of them or any of the securities was ever executed, notwithstanding that Mrs. Jeffords had years of experience with stock, had bought and sold them, and understood the necessity for making assignments of stock.

Appellees take the position that arrangements for confining the jury were made out of the presence of the jury. The fact is that when the jury was taken to dinner additional marshals were called in, and as the jury was composed of both men and women, a woman marshal was added to assist in taking charge of the jury. The jury was fully aware that if a verdict was not agreed upon the jury would be confined for the night.

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BRIEF FOR APPELLEES

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,419

JAMES F. BIRD, Individually
and
JAMES F. BIRD and JEROME KEITH,
Executors of the Estate of
Laura L. Jeffords, Deceased,

Appellants,

v.

ESTELLE S. McCORD
and
HARLOW C. McCORD,

Appellees.

Appeal From the United States District Court
for the District of Columbia

United States Court of Appeals
for the District of Columbia Circuit

FILED MAY 15 1964

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QUESTIONS PRESENTED

In the opinion of counsel for appellees, the questions presented or, more accurately stated, attempted to be presented by appellants are:

1. Were jury questions presented and was there evidence sufficient to support the several findings in favor of appellee, Estelle McCord?

2. Was the trial judge justified in giving the Allen charge in a case, the trial of which started on September 16, 1963 and was concluded on September 30th, and in which the jury, after only seven (7) hours of deliberation, stated "Judge, Your Honor, we cannot come to a decision"?

3. Assuming, arguendo, that there was evidence that appellees acted in concert in taking possession of certain property, can there be error in directing a verdict in favor of appellee, Harlow C. McCord, on the Third-Party Complaint against him when all issues as to entitlement to said property were resolved by the jury in favor of the appellee, Estelle McCord?

(iii)

I N D E X

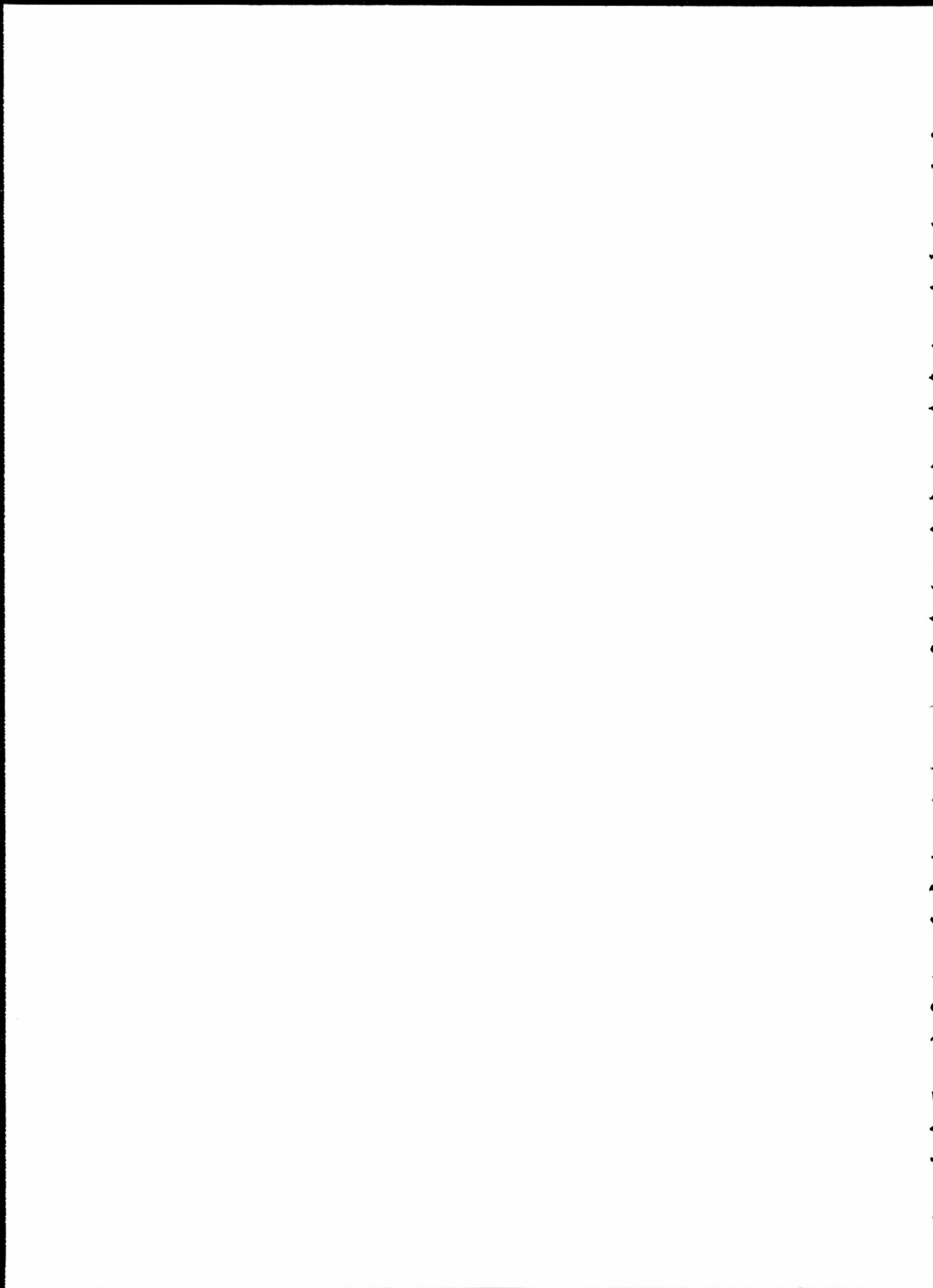
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United States Court of Appeals

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Appeal From the United States District Court
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BRIEF FOR APPELLEES

COUNTER-STATEMENT OF THE CASE

The Issues

Six separate claims were presented by the pleadings, the Pre-Trial Order and the evidence, and the issues with respect to each were submitted to the jury in a carefully prepared charge (J.A. 1-9, 13-19, 334-352). With the exception of the appellant-executors' fourth counterclaim, each claim presented a question as to whether or not decedent, Laura Jeffords,

made a valid gift inter vivos of personal property to her long time close friend, Estelle McCord. Except for differences as to subject matter and time, the issues were identical as to each claim. They were:

1. The mental and physical capacity of Laura Jeffords to make a valid gift.
2. Whether by clear and convincing evidence the following essential elements of a valid gift inter vivos were established:
 - (a) The existence of a positive intention on the part of the donor irrevocably to transfer title to the property in question.
 - (b) The fact of a voluntary and actual delivery of the property by the donor to the donee.
 - (c) The fact of an acceptance of the subject matter of the gift by the donee.
3. Whether there was corroboration of Mrs. McCord's testimony that the gifts were made (J.A. 334-352).

The Subject Matter and Time of the Gifts

Mrs. Jeffords, who had a substantial estate (J.A. 37, Supp. 34) and who had made no provision for Mrs. McCord in her Will, expressed a desire to transfer during life a number of items and securities to Mrs. McCord (J.A. 37, Supp. 68). The trial involved six separately identified groups of items, five of which turned on three specific gift situations. As to one of the gift groups, a separate issue as to the identity of the subject matter was presented.

First, in point of time, was a gift of two Five Thousand Dollar (\$5,000.00) bonds made after discussions begun in the spring of 1959. Mrs. Jeffords, who was then not feeling well and was apprehensive about the possibility of a protracted illness, in September, 1959 transferred and delivered to Mrs. McCord two Five Thousand Dollar (\$5,000.00)

United States bearer bonds so that Mrs. McCord would have the financial means to care for Mrs. Jeffords without Mrs. Jefford's having to go to a nursing home (J.A. 33-38). In lay fashion Mrs. Jeffords suggested that she "sell" the bonds to Mrs. McCord for Twenty-Five Dollars (\$25.00), thus creating a "business arrangement" (J.A. 33, 34). At the trial, Mrs. McCord relied solely on the gift theory as establishing her right (J.A. 344). The actual transfer took place in September, 1959 (J.A. 33, 34).

Second in time sequence was a gift of a cedar chest and its contents. This involved one gift situation but three gift items separately considered by the jury, i.e., stock, cash and the chest and its remaining contents. Over the years Mrs. Jeffords had frequently expressed an intention and desire that Mrs. McCord have as her own and as a gift a certain cedar chest and its contents (J.A. 37, Supp. 11-15). This chest was, until taken by Mrs. McCord, in Mrs. Jefford's bedroom. It contained a group of unendorsed certificates for shares of stock in various companies (the identity of these securities and the fact of their presence in the chest were bitterly disputed at the trial), One Thousand, Two Hundred and Twenty Dollars (\$1,220.00) in cash, silver flat ware, service pieces, papers, linens, etc.

Third, a sunburst pin given to Mrs. McCord on her fiftieth birthday, but subsequently returned to Mrs. Jeffords from time to time.

Finally, the appellant-executors claimed that Mrs. McCord had and had failed to deliver to them two rings.

The Evidence

As a child Mrs. McCord knew decedent, Laura Jeffords, then Mrs. Paul (J.A. 25). The relationship was close and decedent would have liked to adopt her (J.A. 26). Mrs. McCord lived with decedent while attending normal school and decedent assisted with the educational expense (J.A. 26, 27). The two traveled to Europe together with decedent paying the cost. Mrs. McCord was married from decedent's house, and decedent

helped with the expenses of the wedding (J.A. 27). The close relationship between the two women continued through life, but the association was even more frequent after the death of Mr. Jeffords and after Mrs. McCord's children were older (J.A. 29). Mrs. Jeffords was dependent on her for driving and assistance with business affairs (J.A. 29). Mrs. Jeffords had no children (J.A. 31). In the spring of 1959 Mrs. Jeffords was not feeling well and since she had no regular doctor, Mrs. McCord referred her to and took her to her own doctor (J.A. 31). A series of medical tests followed (J.A. 32), and at this time Mrs. Jeffords suggested the transfer of the Treasury bonds so that Mrs. McCord would "always have money to take care of" her (J.A. 32). Following other discussions, the transfer and delivery of the bonds took place at Mrs. Jeffords' house at her insistence (J.A. 33-34). Part of the "agreement" was that during Mrs. Jeffords' lifetime the coupons from the bonds were to be credited to her account and Mrs. McCord was to "have them as your own after I die" (J.A. 33). Except for brief periods when coupons were clipped at Mrs. Jeffords' home and during Mrs. McCord's move from one residence to another, the bonds remained in Mrs. McCord's possession and were in her possession at the time of Mrs. Jeffords' death (J.A. 37, Supp. 1).

Mrs. Jeffords had a sick spell in early October, 1959, and Mrs. McCord was called (J.A. 37, Supp. 5, 6). The illness progressed through various stages to a terminus on December 25, 1959 (J.A. 37, Supp. 7-10). Many years before October, 1959 Mrs. Jeffords had told Mrs. McCord that the cedar chest and its contents were Mrs. McCord's, that she had made a Will in which Mrs. McCord was not named, but that she wanted Mrs. McCord to have the chest and its contents "instead of mentioning you in the will" (J.A. 37, Supp. 11). There were other occasions before her illness of October, 1959 when Mrs. Jeffords made expression of the same donative intent, both to Mrs. McCord and to others (J.A. 37, Supp. 11). During the period from October 11, 1959 through the third week in December, 1959, there were several occasions when Mrs. Jeffords told Mrs. McCord that she wanted her to take the chest and its contents and

in fact urged her to take it (J.A. 37, Supp. 12, 13), to which urging Mrs. McCord finally acceded and accepted by physically taking possession of the chest with appellant Bird's full knowledge and acquiescence (J.A. 37, Supp. 13-15).

Feeling that someone else should know the contents of the chest, Mrs. McCord asked appellant Bird if he would come to her house to go through the chest together. This was done during Mrs. Jeffords' lifetime and on the Monday following the Saturday that the chest had been taken (J.A. 37, Supp. 15). At this time appellant Bird was handling certain affairs for Mrs. Jeffords under a bank power of attorney (J.A. 91, 143). At this time Mrs. McCord told Mr. Bird again that Mrs. Jeffords had given her the cedar chest and the contents (J.A. 37, Supp. 16).

The two went through the contents of the chest, and Mr. Bird sorted out certain business papers and securities, including stock certificates which he put into a special pile and took with him (J.A. 37, Supp. 16, 17). Mr. Bird never gave Mrs. McCord a list of the items that he took with him from her house on that day (J.A. 37, Supp. 16). In delivering the items taken from the chest to Mr. Bird, Mrs. McCord did not intend to relinquish any right to any gift that had been made to her by Mrs. Jeffords (J.A. 37, Supp. 32).

The record contains substantial corroborative evidence as to the fact of the making of a gift, the donative intent, and the mental capacity of Mrs. Jeffords. The witness, Neane Michalka, testified that she was a practical nurse and that she attended Mrs. Jeffords from December 17th until the day of her death on December 25th of 1959 (J.A. 39, 42). This witness testified that on several occasions during this period Mrs. Jeffords told her that she wanted Mrs. McCord to have the cedar chest and everything in it, that everything in it "belongs to Mrs. McCord," (J.A. 40), that Mrs. McCord was as "dear or dearer than a daughter and she must get the cedar chest out before I die" (J.A. 40-41, 43). In the witness' opinion, Mrs. Jeffords was alert and knew what was going on (J.A. 43).

The deposition testimony of one Charlotte B. Souder was read into evidence. Mrs. Souder testified that she became acquainted with Mrs. Jeffords during the first week of August, 1958 and that shortly thereafter she became a roomer in Mrs. Jeffords' home (J.A. 114). She lived there until after Mrs. Jeffords' death (J.A. 114). She saw her daily and visited with her frequently (J.A. 115). On several occasions, Mrs. Jeffords told the witness that the cedar chest and everything in it was Mrs. McCord's (J.A. 125, 126, 130). This witness also testified that up until the time of her death, Mrs. Jeffords' mind was clear and sound (J.A. 127, 128, 129).

Evidence was extracted from the appellant Bird, who was called as a witness, which as to him at least was more than corroborative since it would seem to raise an estoppel as to him, prohibiting any attempt on his part to challenge the competency of the decedent. Mr. Bird testified that he received and acted under a power of attorney from Mrs. Jeffords on October 19, 1959 and that although he, as an attorney, knew that a power of attorney was revoked by the incompetence of the principal, he continued to function under the power of attorney until Mrs. Jeffords' death and did not consider it revoked until her death (J.A. 91).

As stated earlier, three of the gift items were included in one gift situation, the gift of the chest and its contents. There was no dispute as to subject matter of two of the items, a sum of money and the chest itself and miscellaneous contents. There was a sharp dispute as to whether or not there were in fact securities in the chest at the time of its being taken by Mrs. McCord as a result of the gift and as to the identity of such securities as were in the chest, assuming the first claim to be established. The position of appellee Estelle McCord was succinctly summarized by the trial judge in his charge (J.A. 337) as follows:

"Now, Mrs. McCord's claim in this connection, briefly stated, is that Mrs. Jeffords in her lifetime and shortly before her death, made a gift to Mrs. McCord of a cedar chest and its contents, that in the cedar chest were certain securities, namely, certificates for 12 shares of Johns-Manville Corporation; 15 shares of Lanston Industries, Inc.; two shares of Sperry-Rand; 20 shares of Potomac

Electric Power Company; 36 shares of American Telephone and Telegraph Company; a \$1,000 United States Series H Bond; and two \$100 income mortgage bonds of the Fort Dodge, Des Moines and Southern Railway Company; that shortly thereafter, and before Mrs. Jeffords' death, Mrs. McCord gave custody of these securities to Mr. Bird upon his representation that it was necessary that he take possession of them in order for the court to determine whether she was entitled to them; that she has demanded that Mr. Bird and the executors return the securities to her but they have failed and refused to do so."

Mrs. McCord testified on several occasions that she knew that there were securities and stock certificates in the chest (J.A. 37, Supp. 38 & Supp. 44), but that she did not know the number of shares on each stock certificate and that she did not recall the names of all the stocks (J.A. 37, Supp. 45). Mrs. McCord also testified that other than the securities in the cedar chest, Mrs. Jeffords' other stock and securities were at the bank in the safe deposit box (J.A. 37, Supp. 62).

After considerable questioning, appellant Bird admitted that the group of papers taken by him from Mrs. McCord at her house and which he, on December 29th or 30th, turned over to his attorney, Mr. Sullivan, could have included securities (J.A. 101-105). He also testified that on December 28th (the first business day after Mrs. Jeffords' death on Christmas Day, Friday, December 25, 1959) her safe deposit box at the bank was opened in the presence of an officer of the Register of Wills, but that the only thing taken out was the Will and burial instructions (J.A. 108). Mrs. Jeffords' funeral services were held in Washington, but burial was in Ohio. On the morning of December 29th or 30th, just after appellant Bird's return to Washington, Mr. Sullivan came to his apartment, and he then turned over to Mr. Sullivan quite a large batch of papers and many envelopes. He turned over everything to Mr. Sullivan in an unassorted batch (J.A. 109, 112, 203).

Plaintiffs' Exhibits 6A and 6B appear at pages 376 and 377 of the Joint Appendix. Mr. Sullivan, who, until differences arose between them,

was attorney for the executors and the estate, identified his letter to appellees' counsel and identified the subject matter of this portion of the claims as being "all securities which were turned over to Mr. Sullivan by Mr. Bird with the unassorted papers delivered in the early part of December 30, 1959, immediately following Mr. Bird's return from Shreve, Ohio" (J.A. 64, 72, 376). Mr. Sullivan also testified that the safe deposit box at the bank was not again opened until after the appointment of the executors in March or April of 1960 (J.A. 65).

SUMMARY OF ARGUMENT

From an analysis of appellants' Statement of the Questions Presented and of their Argument, the principal point appears to be that appellants complain that there was not evidentiary support for the jury's findings in favor of appellee, Estelle McCord. As the detailed and record referenced Counter-Statement of the Case shows, this is simply not the fact. The claim of appellee, Estelle McCord, in her Complaint and in defense to the counterclaims, was that the subject properties were by valid gifts inter vivos transferred to her by a competent donor during the lifetime of the donor and with donative intent. The issues thus presented were resolved in the favor of the appellee, Estelle McCord, after a thorough and correct charge by the court. Substantial evidence supported the jury's verdict, and it should not be disturbed on appeal.

The giving of the Allen charge under the circumstances of this case was fully justified, and there was no improper pressure upon the jury to reach a decision.

ARGUMENT

I.

The Appellants' Position

The rationale of appellants' brief is difficult to ascertain. Repeated attempts at analysis have led counsel for the appellees to the conclusion that the underlying theory of appellants' position is simply one of dissatisfaction with the verdict of the jury. Apparently they have done such a thorough job of convincing themselves of the merit of their position that they are simply unable to understand how others, including the jurors, could reach a conclusion contrary to that which they entertain.

In a random sort of fashion they have peppered their brief with record citations to evidence considered by them to be supportive of their position. Many of these references do not support the statements for which they are cited. Concededly, others do. Indeed it would be strange if, during a trial the length of this one and in a record just short of five hundred (500) pages, some testimony favorable to appellants' position could not be found. This, however, is not the test to be applied at this stage of the case. On review, this Court must now assume the facts to be as found by the jury. Lake v. Parker, 55 App. D.C. 78, 2 F.2d 127. The evidence adduced at the trial must be considered in the light most favorable for the prevailing party. U.S. v. Woltman, 61 App. D.C. 52, 57 F.2d 418; Washington Railway & Electric Co. v. Chapman, 62 App. D.C. 140, 65 F.2d 486, cert. denied, 54 S. Ct. 75, 290 U.S. 661, 78 L. Ed. 572; Baltimore & O. R. Co. v. Papa, 77 U.S. App. D.C. 202, 133 F.2d 413.

Excepting only consideration of the question of the direction of a verdict in favor of appellant, Harlow McCord, on the appellants' Third-Party Complaint, the appellees are now entitled to have this Court take that view of the evidence which is most favorable to the appellees and to give them the benefit of all inferences which might reasonably be drawn from the evidence in considering whether or not the appellants' several motions for judgment in their favor were properly denied. Koninklijke

Luchtvaart Maatschappij N.V. Klm v. Tuller, 110 U.S. App. D.C. 282, 292 F.2d 775. For this reason, counsel for appellees has taken some care to present its Counter-Statement of the Case referenced to the record herein. It was not attempted to give all of the evidence, but a referenced summary was presented, and we submit leads inevitably to the conclusion that the verdict was amply supported by competent evidence, meeting every one of the elements required to be established by these appellees.

It is understandable that appellants and their counsel can derive some satisfaction from being able to point to bits and pieces of evidence favorable to them. However, their brief contains some practices and statements which cannot be permitted to pass unchallenged.

In the second paragraph from the bottom of page 9 of their brief, appellants discuss incidents of October 16 and October 19 when Mrs. Jeffords executed Powers of Attorney running to appellant Bird. These are the only two dates mentioned in that paragraph, and the immediately following paragraph reads as follows:

"Thereafter the condition of the testatrix rapidly deteriorated (J.A. 37, Supp. 23) and it could not be determined what the extent of her mental capacity was (J.A. 37, Supp. 13). She was definitely senile (J.A. 242) and seven days before her death she was totally incapacitated mentally and physically (Death Certificate, J.A. 367)."

There is not a single word on the page of the record first cited to support the conclusion given. Indeed, reference to the preceding page shows that all of the testimony there cited referred to an incident occurring on the night of December 20 or early morning December 21, which was a period following the completion of all gift transactions involved in the evidence. Again, there is not a single word on the page designated J.A. 37, Supp. 13, to support the proposition immediately preceding it.

Appellants did extract a scintilla of testimony as to senility from Mrs. Jeffords' pastor. However, it appears from his testimony that his acquaintance with Mrs. Jeffords was somewhat limited, and there is no

evidence that he saw her at any of the periods critical to the resolution of the issue of capacity. His evidence is contradicted at many places in the testimony (J.A. 40-43, 127, 128, 129, J.A. 37, Supp. 12 & 13).

For the statement that for seven days prior to her death decedent was totally incapacitated mentally and physically, appellants cite only the Death Certificate itself. This document simply states that death was due to a cerebral thrombosis and that the interval between the onset and death was seven days. There is not a word of testimony that the cerebral thrombosis produced mental incapacity. Furthermore, the doctor who signed the Death Certificate was not called as a witness, and even if the statement were to be given the implication contended for, there was a wealth of contradictory evidence which the jury could have accepted, as they did, in arriving at a contrary conclusion. (See record citations in Counter-Statement of Case).

Again, at page 11 of the brief, appellants make the flat statement that on December 19th Mrs. Jeffords was in a coma and unable to make a gift of anything. Here again they cite the Death Certificate only, and the same response to this contention as given in the preceding paragraph is applicable here.

On page 18 of their brief, where they are discussing the question of the Allen Charge and alleged coercion of the jury, appellants make two statements which are not true. They say that arrangements had been made for the jury's confinement for the night in case they did not reach a verdict and that the jurors knew they were to be confined. No record citations are given for these assertions, and they could not be given since the statements are not the fact.

The case was concluded on October 1 and was submitted to the jury that afternoon. After they had deliberated for approximately three hours, the Judge decided, on his own motion, to let them go home for the night, without keeping them in session through the dinner hour. On the second day, he decided, on his own motion, to keep them assembled into the evening hours and had arrangements made for taking them to dinner in the

custody of the Marshals, as is a usual practice in this District. The only discussion concerning keeping the jury together is set forth at page 362 of the Joint Appendix and as that page clearly shows, the discussion was "out of the presence of the jury." Furthermore, the discussion related only to not sending them home for dinner and keeping them through the dinner hour and into the evening. Appellants state (correctly, but without benefit of record citation) that the jury returned with its verdict at 9:20 p.m. Certainly this is not an unreasonable hour.

II.

The Jury Was Properly Instructed

Throughout their Statement and purported Arguments, appellants refer to the requirement of proof by "clear and convincing evidence." Irrespective of whether or not the appellants were entitled to such an instruction where the claim of the appellee, Estelle McCord, was based upon the assertion of a gift inter vivos, the fact of the matter is that the jury was so instructed, not once but ten separate times, during the course of the charge that appellee, Estelle McCord, was required to establish her claims by "clear and convincing evidence" on all of the issues as to which she had the burden of proof (J.A. 338, 342, 344, 345, 346 (twice), 347 (twice), 348 & 350). If any complaint could be made with respect to this portion of the charge, possibly appellees could complain that the burden of proof to satisfy the jury by clear and convincing evidence from Mrs. McCord was unduly emphasized.

The court instructed the jury on the question of mental capacity and again, if anything, went more in favor of appellants than might have been required under the circumstances. If the charge was in fact more favorable to them than that to which they were entitled, they cannot be heard to complain now. This portion of the charge appears once at J.A. 340. Immediately following this, the court recognized the law laid down by this Court in Conlon v. Turley, 56 App. D.C. 95, 10 F.2d 890, and

carefully instructed the jury as to each of the elements required for a valid gift inter vivos.

III.

The Statute of Frauds Is Inapplicable

The appellants cite and set out in their brief the requirements of the District of Columbia Code with respect to the Statute of Frauds. They also cite cases which bear on this Statute. These citations are completely inapplicable to the circumstances of the case at bar since it clearly appears that the appellee, Estelle McCord, claimed the property in dispute on the basis that it had been given to her by Mrs. Jeffords during Mrs. Jeffords' lifetime. Corroboration of such claims is required and was given. However, the Statute of Frauds has no application to a gift inter vivos transaction.

IV.

The Third-Party Complaint Was Properly Disposed Of

The executors filed a Third-Party Complaint against appellee, Harlow C. McCord, charging him with removing and concealing unidentified assets of the Jeffords estate. The only evidence at the trial with respect to any activity by Mr. McCord was that in the presence of appellant Bird, Mr. McCord and his son-in-law physically carried the cedar chest from the Jeffords house to a motor vehicle for transport to the McCord residence. The trial court properly ruled that this evidence of Mr. McCord's having acted as the "drayman" did not constitute sufficient evidence for the jury to consider in support of the allegations of the Third-Party Complaint. The direction of a verdict was, therefore, proper. Appellants in their brief have not detailed any evidence which would justify a contrary conclusion. Furthermore, even if the court erred with respect to the direction of a verdict as to the Third-Party Complaint, the jury's

decision resolving all of the issues with respect to this property in the favor of appellee, Estelle S. McCord, completely removes any basis for a finding in favor of the executors with respect to property the jury found to be that of the appellee, Estelle McCord.

V.

**The Identity of the Securities in
Dispute Was Properly Established**

Admittedly, the proof of the identity of the securities claimed by Mrs. McCord in her original Complaint was established by circumstantial evidence. The jury was properly instructed with respect to this, and found this issue in her favor. The evidence is detailed, and the detail is referenced to the record in the Counter-Statement of the Case, and the record citations will not be here repeated. To recapitulate, the testimony of Mrs. McCord was that there were securities in the cedar chest when she received it and that she allowed Mr. Bird to take them on December 21, 1959, along with other papers. Neither Mrs. McCord nor Mr. Bird made a list or inventory of the items taken. Mrs. McCord frankly said she could not absolutely identify them. Mr. Bird testified that he took some papers from Mrs. McCord and later turned them over to Mr. Sullivan and admitted, albeit reluctantly, that these papers could have included securities. Mr. Sullivan, the attorney for the executors, testified that he physically received securities from Mr. Bird on December 29 or 30, 1959 and that he made a list of them (Plaintiff's Exhibit 6B). Plaintiff, in examining both Messrs. Bird and Sullivan, negated the possibility that the securities on Mr. Sullivan's list could have come from any source other than the cedar chest. The list of securities in Plaintiff's Exhibit 6B was identified by Mr. Sullivan as being in his handwriting and his accompanying letter, 6A, clearly fixes the date these documents came into his possession. When Mrs. Jeffords' safe deposit box was first opened, the attorney, Mr. Sullivan, had not been engaged and was not present. Also

at the first opening of the box, while Mr. Bird was present, only the Will and burial instructions were taken from the box. Obviously, as was argued to the jury, Mr. Sullivan had to have access to some documents which would give him the detail which he included in the first eleven items on his inventory, which included the name of the company issuing the securities, the serial number of each certificate and the number of shares represented by the certificate. It was argued to the jury that this identified the items claimed as having been items which were in the cedar chest at the time of its being given to Mrs. McCord and her acceptance of it. Appellants have not yet produced any evidence as to another possible source from which these specific securities could have come into Mr. Bird's possession. It is respectfully submitted that as to this item, there is no basis for disturbing the jury's verdict.

VI.

The "Allen Charge" Was Proper

The appellants eighth point is a belated objection to the court's giving the jury the so-called Allen Charge. As has previously been pointed out, the trial of this case began on September 16th and the case was not submitted to the jury until October 1, in the afternoon of that day. After approximately three hours deliberation on that day, the jury was allowed to separate and go home for the evening. Proper admonitions before this was done were given. Some time during the early afternoon of October 2nd, the jury sent the judge a note, following which at 3:17 in the afternoon, the court was reconvened and the jury brought into the courtroom (J.A. 361). The court read the note, "Judge, Your Honor, we cannot come to a decision" (J.A. 361). Without further consultation with counsel, the judge gave the Allen Charge. From a calculation of the time stated by the court at pages 360 and 361 of the Joint Appendix, it appears that the jury had only been deliberating for seven hours at the time the Allen Charge was given, after they had announced their inability to agree. Counsel for appellants renewed his motions for directed verdicts, but made no objection

to the giving of the Allen Charge. Rule 51 of the Federal Rules of Civil Procedure precludes objection at this time. In any event, the Charge was properly given under the circumstances here presented. See Hoagland v. Chestnut Farms Dairy, 63 App. D.C. 357, 72 F.2d 729; Capital Transit Co. v. Howard, 90 U.S. App. D.C. 359, 196 F.2d 593; Daly v. Toomey, 212 F. Supp. 475 (affirmed ___ U.S. App. D.C. ___).

VII.

The Verdict Was Consistent

Appellants have argued that there was an inconsistency in the jury's verdict, requiring appellate action. This they argue from the finding in the favor of the executors with respect to one of the six items involved in the trial, i.e., a sunburst diamond pin. A different factual situation was presented with respect to the sunburst diamond pin than was presented with respect to any of the other gift items. There was uncontradicted testimony that Mrs. Jeffords gave Mrs. McCord the sunburst pin on her fiftieth birthday (J.A. 37, Supp. 30). It was equally undisputed that after that time, Mrs. Jeffords had the pin back in her possession from time to time and that the sunburst pin was the subject of a specific bequest in Mrs. Jeffords' Will (J.A. 37, Supp. 35). On the same page as the last citation, it also appears that Mrs. McCord testified at the trial that she was perfectly willing for the specific legatee to have the pin, and if it was bequeathed to a Mrs. Croxton, as it was, "she certainly may have it." From this, the jury certainly could reach a different conclusion than it reached with respect to the other items. They could have found that if a gift of the sunburst pin was made, it had either been revoked by common consent or the plaintiff, Mrs. McCord, had relinquished her claim to it.

CONCLUSION

In conclusion, we repeat that the entire burden of appellants' case is that they are unhappy with the jury's verdict, but that they have failed to demonstrate a proper legal basis justifying this Court in setting aside the verdict and remanding the case. The Judgment appealed from should be affirmed.

Respectfully submitted,

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